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The Working and Impact of the House of Commons Political and Constitutional Reform Committee in the 2010-15 Parliament

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*The Working and Impact of the House of Commons
Political and Constitutional Reform Committee in the
2010-15 Parliament*

Eloise Elizabeth Catherine Ellis

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Abstract

Much of the development in constitutional reform that took place between 2010 and 2015 might be described as an accident of circumstance, particularly those in the early years that were widely regarded as a compromise intended to bind the Conservative-Liberal Democrat Coalition Government together. It was this unique context of a Coalition Government in office, with a specific constitutional reform policy brief accorded to the Liberal Democrat leader as Deputy Prime Minister, that gave rise to the House of Commons Political and Constitutional Reform Committee being established in 2010. The creation of this Committee, and the passage of the Fixed-term Parliaments Act 2011 shortly after providing a fixed five-year term for the working of the Committee, formed the genesis and basis for this PhD study.

This particular Committee was, in the words of its Chair, a 'bolt-on'; it was an 'experiment' with a finite lifespan. The conditions in which the PCRC emerged enabled it to carve out a unique position for itself, adopting a strategic and focused five-year plan. This thesis studies the PCRC not only for its working and impact in the evolving process of constitutional reform in the UK, but as a case study assessment of House of Commons Select Committees more widely. It considers the strengthened and more wide-reaching role that a Select Committee was able to perform during the 2010-15 Parliament, especially with respect to the development of public policy both in terms of scrutiny of Government action and proposals and the initiation of its own policy ideas and proposals.

Conclusions are drawn about the aims, quality and effectiveness of the Committee's work, particularly in influencing government and parliamentary thinking on constitutional affairs, and the legacy of the PCRC is examined. This in-depth case study of the work of the PCRC is the first of its kind to examine this unique Select Committee, and provides an original contribution to a scholarly understanding of the working and impact of the Select Committee system. It serves to identify best practice in working methods and innovations of a Select Committee, and suggests there is scope for some of these working practices to be adopted more widely, adding to the evolving structural reform that has taken place in recent years designed to improve the effectiveness of Select Committees at Westminster.

Preface

Background

The Select Committee system in the Commons has been the subject of considerable evolution and change since its introduction in 1979. Recent changes have included, for example, taking on a far greater pre-legislative scrutiny role than ever before, and their chairmanship and membership being chosen directly by MPs themselves, providing them with a 'double legitimacy – election by our colleagues as well as our constituents'¹ rather through the party whip system. Culturally, due in part to the crisis of public confidence in Parliament following the expenses scandal of 2009 and a desire to redeem the standing of MPs, the Select Committees have also grown in assertiveness and energy in carrying out their work.

The extent to which Select Committees have a real and practical impact on government policy and administration, however, is a different question which goes to the heart of the present thesis. Since 1979 the recommendations in Select Committee reports have rarely been adopted outright by ministers, who are principally concerned with implementing their own prepared agenda, particularly, as during the term of the Political and Constitutional Reform Committee in the 2010 Parliament, one emerging after taut negotiations between Coalition partners. However, a Committee's work in raising a subject for inquiry, or gathering evidence that tests the veracity of a department's position, or displaying the strength of parliamentary support behind its conclusions, does exert considerable pressure on the government.

Scope and Structure of the Thesis

This work begins with a critique of the literature and current understanding of the role of Parliament in scrutiny, specifically that of constitutional and political reform, moving towards a focus on the Parliamentary Select Committees' increasingly central position in the Westminster system.

It then focuses on the specific work of the unusual and innovative Political and Constitutional Reform Committee during the 2010 Parliament. The Committee's work is categorised into three, overlapping, strands and its impact and influence are thus analysed in the fields of

¹ Graham Allen, LSE Blog, 6 December 2011: <<http://blogs.lse.ac.uk/politicsandpolicy/2011/12/06/parliament-military-action/>> accessed 8 December 2011

legislative review, acting as forum for research and evidence collection and in terms of initiating and generating debate on constitutional change, particularly around codification.

The conclusions attempt to evaluate the work of this particular Committee, which was not reappointed following the 2015 General Election, with a discussion around its legacy.

Methodology

The programme of research for this thesis included a comprehensive study of the existing scholarly literature on the institutions and working of the Westminster Parliament and its Select Committees, and of all parliamentary publications and debates on the Select Committee system over the period since their introduction in 1979, especially those addressing the functioning of Select Committees themselves; attendance at and observation of Select Committees in action, especially the Political and Constitutional Reform Committee (PCRC); and a series of personal meetings and interviews with members of the PCRC as well as other leading parliamentarians, parliamentary clerks and leading parliamentary scholars for their views on the working and achievements of the PCRC.

Frequently used abbreviations/acronyms

CSPL	Committee on Standards in Public Life
DPM	Deputy Prime Minister
DPRR	Delegated Powers and Regulatory Reform Committee
JCHR	Joint Committee on Human Rights
PACAC	Public Administration and Constitutional Affairs Committee
PASC	Public Administration Select Committee
PCRC	Political and Constitutional Reform Committee
PM	Prime Minister

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I have also been fortunate to have a number of friends and colleagues who have not only provided support and encouragement throughout this process but also kindly read chapters at various stages of drafting, in particular heartfelt thanks to Lu Xu, Caroline Morris and Philip Morgan.

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But most of all I owe a huge debt of gratitude to my family, and in particular my wonderful mother, Florence Ellis, without whose love and support (along with much time spent looking after my daughter, Clementine) I would never have achieved this.

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PART I: Introduction and Background

Chapter One: Parliament's Scrutiny Function

A. General Overview

'Good government needs an effective Parliament'.²

1. Introduction

By way of introduction, this section provides an overview of the role of Parliament, in particular the Select Committees, in relation to the scrutiny of constitutional reform (as undertaken by central Government). It is in the context of this theoretical framework that the work of the Political and Constitutional Reform Committee during the 2010 Parliament is analysed.

The starting point of this thesis is a recognition that the scrutiny function of Parliament, within the 'Westminster model' of a Parliamentary Executive, should be the dominant one. This acknowledges that recent reforms, particularly but not exclusively, those implemented since 2010 as a result of the recommendations of the Wright Committee³ were intended to strengthen this specific Parliamentary role. Effective scrutiny, and the related assurance of accountability, of Government by Parliament is a defining feature of the Westminster system; in the words of the former Leader of the House of Commons, Robin Cook, '[G]ood scrutiny makes for good government'.⁴ The increased independence and prominence of the Parliamentary Select Committees makes a significant contribution to improving the scrutiny function of Parliament in relation to constitutional reforms. During its five-year term the PCRC took a particularly pro-active approach to scrutiny in the field of political and

² Philip Norton, 'Reforming Parliament in the United Kingdom: The report of the commission to strengthen Parliament' (2000) 6(3) *Journal of Legislative Studies*, 1

³ Reform Committee, *Rebuilding the House*, (HC 2008–09, 1117)

⁴ Modernisation Committee, *Modernisation of the House of Commons: A Reform Programme for Consultation* (HC 2001–2, 440) Memorandum submitted by the Leader of the House of Commons

constitutional reform and thus it provides a useful illustration of the practical working and impact of a specific Committee.

2. Defining the Parameters

In examining how Parliament scrutinises constitutional reform, several related questions should be briefly addressed:

- How does one define the terms ‘scrutiny’ and ‘constitutional reform’; and
- What is the designated role of Parliament in the context of scrutiny (and, to a lesser extent, public policy formulation)?

A recent Institute for Government project defined scrutiny as ‘any activity that involves examining (and being prepared to challenge) the expenditure, administration and policies of the government of the day’.⁵ Scrutiny is generally perceived to be ‘an active process’⁶ and has been defined as ‘critical observation or examination’.⁷ For Andrew Tyrie, the experienced and highly regarded Chair of the Treasury Select Committee,⁸scrutiny means ‘forcing the Government to explain its proposals and justify its actions’.⁹ Whilst it is obvious that Her Majesty’s Official Opposition¹⁰ has a specific role to play in questioning and scrutinising the work of the Government, it is equally crucial that a Governing party’s own back-benchers should act as a ‘critical friend’.

The Institute of Government’s recent work also suggests:

[T]hat the primary purpose of scrutinising government should be to improve its effectiveness in terms of processes and outcomes...It is useful to distinguish the impact of scrutiny on process from its impact on outcomes. *Scrutiny of process* asks the question, ‘Did those in authority do what they were required to in reaching this

⁵ Hannah White, ‘Parliamentary Scrutiny of Government’ (Institute for Government, January 2015) p1

⁶ White, ‘Parliamentary Scrutiny of Government’ (n5) p3

⁷ <http://www.oxforddictionaries.com/definition/english/scrutiny>

⁸ Then also Chair of the Liaison Committee

⁹ Andrew Tyrie, ‘Government by Explanation’ (Institute for Government, April 2011) 6

¹⁰ Parliament.uk, Glossary <http://www.parliament.uk/site-information/glossary/opposition-the/>

decision?’ This is important to ask because processes are generally put in place to safeguard the quality and legitimacy of government decision making. Processes can guard against decisions that are inappropriately influenced, lack appropriate consultation, overstep powers and so on. On the other hand, *scrutiny of outcome* asks, ‘Was the outcome what the Government intended?’, ‘Could that outcome have been achieved more effectively?’ and ‘Was that outcome the best possible one?’¹¹

Both procedural and substantive scrutiny mechanisms are combined in the work of the Select Committees with review of process (often leading to specific recommendations) and a more evaluative approach in terms of the long-term perspective and wider considerations. This is more apparent in the context of the cross-cutting rather than departmental committees and where a uniquely positioned Committee, such as the PCRC, is particularly worthy of study. The combination of innovation and variety in working methods adopted by this single-term body provide learning opportunities for future Committees and their work.

3. The Influence and Impact of Parliament

Arguably the primary function of an effective Parliament, particularly within a Parliamentary Executive, is to carry out effective scrutiny of the Government.¹² Parliament performs this function through the ‘principal methods’ of ‘questioning government ministers, debating and the investigative work of committees’ and in return the ‘government can publicly respond to explain and justify policies and decisions.’¹³ As White explains, a number of factors *taken in combination* make Parliamentary scrutiny distinctive. It is ‘undertaken by politicians...[so] is sensitive to the [political ideologies and practicalities that shape government actions, in contrast to other forms of scrutiny, which are sometimes criticised for producing worthy but politically unworkable solutions’. However, this also means that Parliamentary scrutiny

¹¹ White, ‘Parliamentary Scrutiny of Government’ (n5) p4

¹² The other key functions are generally acknowledged to be passing legislation and authorising government expenditure (through voting financial supply) - Parliament.uk: <<http://www.parliament.uk/about/how/role/>>

¹³ Parliament.uk: <<http://www.parliament.uk/about/how/role/scrutiny/>>

undertaken by politicians 'is shaped by many motivations beside the ambition to improve the effectiveness of government. These may compromise the effectiveness of scrutiny'.¹⁴

Further, 'MPs who undertake scrutiny do so in their capacity as the democratically elected representatives of the taxpayer and the citizen. An awareness of this contributes legitimacy and importance to the process'.¹⁵ Other elements which are argued to contribute to the distinctive nature of Parliamentary scrutiny are: that it 'attracts more attention from the media than other activity within the scrutiny-landscape'; it 'involves an accountability' relationship; and that the 'vast majority of parliamentary scrutiny proceedings take place in public and are a matter of public record, although committees deliberate about their conclusions in private and very occasionally take evidence behind closed doors'.¹⁶ In the words of Lloyd George, 'the House is the sounding board of the nation; it both speaks for and speaks to the people.' 'This process of communication inevitably influences government'.¹⁷ One prominent example would be the debates and divisions held in the Chamber over recent years on the controversial matter of the use of Prerogative powers in relation to deploying the armed forces.¹⁸ As 'political accountability mechanisms, the success of Parliamentary debates, questions and Select Committees must depend both on the political will of the politicians involved and on how widely the issues under scrutiny are publicized and analysed via the news media and in public debate more broadly'.¹⁹

The extent to which Parliament has a tangible impact upon Government policy and action is more limited and 'Parliament's influence ultimately depends on its relations with people' – it does not operate in a vacuum... 'the House of Commons is created by and is in the end responsible to the electorate'.²⁰ Public perception of the effectiveness of Parliament is

¹⁴ White suggests '[F]or example, a backbench government-party MP might treat a minister gently in a select committee hearing or ask a helpful question at Prime Minister's Questions in order to enhance their own career prospects. More seriously, they might ask a question to serve outside interests for personal gain.' (n5) p15

¹⁵ White (n5) p15

¹⁶ *ibid* p16

¹⁷ Cited in Griffith and Ryle, *Parliament Functions, Practice and Procedures* (Robert Blackburn and Andrew Kennon eds, 2nd edn, Thomson Sweet and Maxwell 2003) 1-031

¹⁸ See chapter four, part c

¹⁹ Nicholas Bamforth, 'Accountability of and to the Legislature' in Nicholas Bamforth and Peter Leyland (eds) *Accountability in the Contemporary Constitution* (OUP 2013) 268

²⁰ Griffith and Ryle (n17) 1-031

another factor. According to the most recent Hansard Society Audit of Political Engagement in 2016, 42% agreed that Parliament holds Government to account (7% higher than 2015 but lower than the 47% in 2013).²¹

The Commission on Strengthening Parliament²² identified five core functions of Parliament (within the Westminster model) which are outlined below:

1. To create and sustain a government. This is achieved through elections to the House of Commons and, where necessary, through votes of confidence in the House.
2. To ensure that the business of government is carried on. This is achieved through giving assent to government bills and to requests for supply (money) from the government.
3. To facilitate a credible opposition. This is done through the second largest party forming an organised alternative government. Other parties may also organise and seek to challenge government.
4. To ensure that the measures and actions of government are subject to scrutiny on behalf of citizens and that the government answers to Parliament for its actions.
5. To ensure that the voices of citizens, individually and collectively, are heard and that, where necessary, a redress of grievance is achieved.²³

For Griffith and Ryle:

It is a central feature of Parliament, however, that it mainly performs a responsive rather than an initiating function within the constitution. The government – at different levels – initiates policy, formulates its policy on legislation and other proposals, exercises powers under the prerogative or granted by statute and, in all these aspects, performs the governing role in the State. Both Houses of Parliament spend most of their time responding, in a variety of ways, to these initiatives, proposals or executive actions.²⁴

²¹ Audit of Political Engagement (Hansard Society, 2016)

²² The Commission to Strengthen Parliament appointed by William Hague (as Leader of the Opposition) in July 1999 and chaired by Lord Norton of Louth, with a remit 'to examine the cause of the decline in the effectiveness of Parliament in holding the executive to account, and to make proposals for strengthening democratic control over the Government'. Report published in July 2000 – *Strengthening Parliament*

²³ Norton, 'Reforming Parliament in the United Kingdom' (n2) 2

²⁴ Griffith and Ryle (n17) 1-006

There is indeed something of a discord in our system, in that Parliament performs a role in sustaining and supporting a Government whilst simultaneously subjecting it to critical scrutiny. As Redlich explains:

The rules of Parliamentary procedure are the rules which each House of Parliament has found to be conducive to the proper, orderly and efficient conduct of its business...[T]he business of the House of Commons...is threefold; legislative, financial and critical...By means of questions and discussions it criticises and controls the actions of the executive.²⁵

It is this separation but interdependence of the criticising and controlling power on the one hand and the executive power on the other, that constitutes the parliamentary system of government.²⁶

Historically the effectiveness of scrutiny by Parliament and the extent of Executive dominance have varied. In a study of the increase of Ministerial control over the Commons in the Nineteenth Century, '[It] was no longer possible to pretend that private members as such could control the Executive. That task now clearly devolved upon the opposition party.'²⁷ In 1904, Low explained that:

The true check upon a presumptuous Government, and a hasty legislature, is the existence of an alternative party, numbering its adherents by hundreds of thousands in the constituencies, and having its articulate chiefs in the House of Commons itself.²⁸

In 1963 Crick could comfortably suggest that '[T]he modern executive must dominate the House to get its legislation through. But this has been true since the time of Parnell'.²⁹ In recent decades, we have increasingly observed criticisms that Parliament was being further

²⁵ Josef Redlich, *The Procedure of the House of Commons: A Study of its History and Present Form* (A Ernest Steinthal tr, Vol 1, Elibron Classics book, (Archibald Constable & Co., Ltd., London 1908) [accessed electronically via <<http://www.onread.com>>]¹⁴

²⁶ *ibid* 17

²⁷ Peter Fraser, *The Growth of Ministerial Control in the Nineteenth-Century House of Commons*, *The English Historical Review*, Vol. 75, No. 296 (July 1960) 444-463

²⁸ Sidney Low, *Governance of England* (1904, London, T. Fisher Unwin) 122

²⁹ Bernard Crick, *The Reform of Parliament* (2nd impression, 2nd edn, Cox & Wyman Ltd 1969) 3

and further side-lined with the progressively dominant role performed by certain Prime Ministers, for example, the Crossman thesis of Prime-Ministerial Government, and in the late 1990s suggestions of Presidential style leadership. Such instances though have customarily been followed by a more collegiate style of governing under the next Prime Minister, albeit perhaps through necessity (for example, owing to a smaller majority in the Commons) rather than desire. What the past 50 years or so have really demonstrated is that such trends are not consistent but rather relate, in large part, to factors such as the size of a Government's majority in the Commons and the individual personality of successive Premiers. The most perceptible trend recently has rather been in the opposite direction – that of the rise of the back-bencher and, as is discussed throughout this work, the strengthening of Parliament in relation to Government. The structural developments brought about as a result of the recommendations of the Modernisation Committee in the early 2000s and the Wright Committee ten years later have provided a solid framework upon which these developments can, and should, continue to build.

4. Reform of the House of Commons

According to Griffith and Ryle, '[C]hange is the continuing and constant characteristic of the British Parliament'.³⁰ Reform or, as it is sometimes framed, revitalisation of the lower House has occurred in a largely evolutionary manner marked by several notable instances or periods of significant change.

Many of the most substantive changes relate to the role of Committees, for example:

- the 1945 Labour government 'introduced procedural innovations for dealing with legislation in committee';³¹
- Richard Crossman in the 1960s introduced specialist committees and morning sittings (both relatively short-lived);
- 1979 saw the introduction of the 'modern' select committee system;

³⁰ Griffith and Ryle (n17) 13-002

³¹ Greg Power, 'The politics of parliamentary reform: Lessons from the House of Commons (2001-2005)' (2007) 60(3) *Parliamentary Affairs* 492

- the ‘modernisation’ of Parliament under Blair between 2001 and 2005 was another phase of Commons reform (described by Wright – writing in 2004 - as ‘a period of deliberate and sustained reform’);³²and
- 2010-15 was the most recent phase of sustained constitutional reform under a Coalition Government.

On Parliamentary reform it has been argued that ‘modernisation-as-efficiency has had more success than modernisation-as-scrutiny, despite the attempt by a reforming Leader of the House to combine the two.’³³

One might ask what it is that prompts such Parliamentary reform: Why does it come about at certain times and under which particular conditions? Is it possible to identify specific ‘triggers’? Power and Flinders both refer to the ‘window of opportunity’ identified by Philip Norton as a prerequisite for significant reform.³⁴ Norton suggests that in order to successfully achieve reform there are three conditions: first, the ‘window of opportunity’ which occurs soon after a general election; secondly, a coherent set of proposals for reform upon which MPs can draw, and unite behind; thirdly, there must be political leadership and will to pursue the reform, this can come from the Leader of the House or the back-benches.

A pertinent practical example is provided by way of illustration:

In 1979, when the departmental select committees were set up, all three conditions were met. The motions to set them up were put before the House almost immediately after the new House met. There was a reform agenda in the form of a well-argued report (published in 1978) from the Procedure Committee. There was leadership in the form of a reform-minded Leader of the House, Norman St John-Stevas, and pressure from back-benches on both sides of the House.³⁵

³² Tony Wright, ‘Prospects for Parliamentary Reform’ (2004) 57(4) *Parliamentary Affairs*, 867

³³ *ibid* 870

³⁴ Power (n31); Matthew Flinders, ‘Shifting the balance? Parliament, the executive and the British constitution’ (2002) 50 *Political Studies* 23

³⁵ Norton, ‘Reforming Parliament in the United Kingdom’ (n2) 13

It is also, naturally, generally the case that parties in opposition are more likely to advocate reforms strengthening Parliament in relation to Government.³⁶ In addition, when Governments bring about Parliamentary reform it has the potential to result in greater rather than lesser executive dominance, a useful example (drawn upon by Wright) is that of Blair's New Labour Government in which Parliament was included in the 'constitutional reform agenda' but, in practice, the result of the interpretation by the whips of the suggestion by the Prime Minister that the MPs were to be 'ambassadors for the government in the country' was that many Parliamentarians faced outwards (towards campaigning and the goal of re-election) rather than inwards in their focus.³⁷

5. The Role of Select Committees in the House of Commons

Select Committees have 'become a part of the established political furniture'³⁸ and are 'professional and highly respected elements of the parliamentary landscape'.³⁹

As Griffith and Ryle explain:

Unlike standing committees,⁴⁰ select committees fulfil a function which the House itself could not possibly undertake – they can hear evidence from outsiders, deliberate informally and draw up conclusions...Such Select Committees are 'appointed by the House and are subordinate to it. The House gives them their duties in their "orders of reference".... It is to the House that committees make their reports.'⁴¹

Whilst Parliament as a body examines and questions the Government through a variety of means, it is arguably in the context of the committee system that the more detailed and less partisan scrutiny work is undertaken. The work of the Select Committees fulfills a variety of

³⁶ See, for example, The Commission to Strengthen Parliament, *Strengthening Parliament* (July 2000) - appointed by Hague, as Leader of the Opposition, in 1999 and chaired by Philip Norton (n22)

³⁷ Wright, 'Prospects for Parliamentary Reform' (n32) 868-9

³⁸ Andrew Hindmoor, Phil Larkin & Andrew Kennon 'Assessing the Influence of Select Committees in the UK: The Education and Skills Committee, 1997–2005' (2009) 15(1) *Journal of Legislative Studies*, 71, 86

³⁹ Liaison Committee, *Building public engagement: Options for developing select committee outreach*, (HC 2015-16, 470) 45

⁴⁰ Now Public Bill Committees (outlined below)

⁴¹ Griffith and Ryle (n17) 6-246

purposes, for example: scrutiny of Government; examination of bills; and addressing specific issues.⁴² As a 'body which can take evidence and reports its conclusions' the Select Committee 'mechanism' 'has been used by the House for many years for a wide variety of tasks.'⁴³

According to the former Leader of the House of Commons, writing in 2001:

The Departmental Select Committees are the *most developed vehicle through which MPs can carry out detailed scrutiny of Government policy and Ministerial conduct*. It is therefore right that the Modernisation Committee should have chosen the powers of the Select Committees as its priority for consideration. The Committee is examining the process of nominations to Select Committees, the resources and powers available to the committees, and the ability of the Commons to consider Select Committee Reports.⁴⁴

Within the unique setting of Parliament the Select Committees are further distinguished by their non-partisan approach and, often, meticulous scrutiny. 'It is the tradition of select committees, bolstered by their practice of deliberating in private [although they generally take evidence in public] to proceed as far as possible by consensus and without regard party affiliations'.⁴⁵

Griffith and Ryle identify 'two confrontations' which underlie all Parliamentary business, the second of which relates to the debate between government and other members of Parliament - that is, those members without Executive responsibilities and therefore with greater freedom to act independently of party.⁴⁶ It is submitted that:

A notable forum for this latter confrontation is the select committee. Here back-bench Members of all parties come together to examine government policy and

⁴² *ibid*

⁴³ *Ibid* 11-002

⁴⁴ Modernisation Committee (HC 2001–2, 440) (n3) Memorandum submitted by the Leader of the House of Commons

⁴⁵ Erskine May, *Parliamentary Practice* (Lexis-Nexis 24th ed., 2011) 799

⁴⁶ Griffith and Ryle (n17) 1-024

administration, usually in a largely non-party way, with little influence from the whips, and to agree (sometimes on cross-party votes and often unanimously) reports commenting on the government's handling of issues, criticising or praising, coming to conclusions and making recommendations. This work, although essentially advisory rather than decision-taking, has increased greatly in recent years and has focused, in a systematic way, the confrontation between back-benchers on both sides and ministers of the Crown.⁴⁷

It is, however, true that sometimes '[A]lthough select committees normally try to achieve a cross-party consensus on their reports, party-political motivations may well affect areas of inquiry and lines of questioning pursued with witnesses.'⁴⁸ For example, in relation to the PCRC, despite the largely successful working practices adopted and the Committee's admirable, and largely successful, attempt to avoid partisanship and political point scoring, at times the underlying political agenda of individuals has, unfortunately, been evident.⁴⁹

Positioning the Parliamentary Select Committees as a focal point in relation to effective scrutiny by Parliament has been a key contributory factor in realising the viability of alternative career paths for politicians. As noted by Rush:

The increasing use of select committees has provided an alternative career path in Parliament, whether involving active membership of a committee or leading a committee as chair, a career path recognised in 2003 by the introduction of a salary for the latter. How far it will develop as true alternative to a ministerial career remains to be seen, but of the select committee chairs in 2004 only four out of 24 had been solely backbenchers; of the rest, eight had been ministers (five as opposition frontbenchers as well), nine opposition frontbenchers, one a government whip, and two PPSs.⁵⁰

⁴⁷ *ibid* 1-025

⁴⁸ White, 'Parliamentary Scrutiny of Government' (n5) p4

⁴⁹ See later chapters – notably Flynn and Hunt

⁵⁰ Michael Rush, 'Career Patterns and Professionalisation' in Philip Giddings for the Study of Parliament Group (ed) *The Future of Parliament: Issues for a New Century* (Palgrave Macmillan, 2005) p42

However, Hansard Society research from 2000 in which a survey of MPs included a question as to the importance of serving as a Minister or Chair of a Select Committee, demonstrated that many Members, at least at that stage, did not regard Select Committee leadership highly: 36.8% responded that serving as Chair of a Select Committee was 'very' or 'quite' important but 41.1% indicated that, in their view, it was 'not important' or 'not at all important'.⁵¹ It is, of course, important to consider that this research was carried out before the 2010 tranche of reforms and there are indications that attitudes are shifting.⁵²

A study into the influence of the Education Committee specifically, again at a time *before* the implementation of the Wright reforms, suggested that despite their lack of formal powers,⁵³ 'as a rare source of 'unbiased information, rational debate and constructive ideas',⁵⁴ Ministers are nevertheless said to 'heed their advice routinely'⁵⁵ and a detailed review of the Select Committees, carried out by the Liaison Committee, found that:

The 1979 select committee system has been a success. We have no doubt of that. At a bargain price, it has provided independent scrutiny of government. It has enabled the questioning of Ministers and civil servants, and has forced them to explain policies'.⁵⁶

⁵¹ The Hansard Society Commission on Parliamentary Scrutiny (The Newton Commission) 'The Challenge for Parliament – Making Government Accountable' (London, Vacher/Dod 2001) Appendix 4, Table 3.11

⁵² See later chapters

⁵³ Particularly weak when compared with the power and resources allocated to equivalent Parliamentary Committees in other countries

⁵⁴ Liaison Committee, *Shifting the Balance: Select Committees and the Executive* (HC 1999-2000, 300) 4

⁵⁵ Andrew Hindmoor, Phil Larkin & Andrew Kennon 'Assessing the Influence of Select Committees in the UK: The Education and Skills Committee, 1997–2005' (2009) 15(1) *Journal of Legislative Studies*, 71

⁵⁶ Liaison Committee (HC 1999-2000, 300) (n54) 4

B. Select Committees in Context

1. The Specific Role of the Select Committee in Parliament

As discussed above, a key function of the Select Committee is scrutiny of Government and ‘they have become over recent years the principal mechanism by which the House discharges its responsibilities for the scrutiny of government policy and actions’.⁵⁷ It has been claimed that ‘[S]elect committees...provide the most rigorous sort of parliamentary scrutiny, conducting thematic inquiries based on oral and written evidence’.⁵⁸

The basic working pattern of a Select Committee, under the modern day system established in 1979 (which has since evolved in a piecemeal fashion with two major shifts: first, reforms introduced by Robin Cook, as Leader of the House of Commons, in 2002; and secondly, the post-2010 changes implementing the Wright Committee reforms) follows a fairly standard route. It commences with a Committee decision to hold an inquiry, usually following consideration of a foundation paper with a list of suggested topics for inquiry, prepared by the Committee Clerk, and usually ends with the production of a Report containing findings and recommendations, often accompanied by a press release. The Government is then expected to make a formal written response within two months, which in turn is published by the Select Committee (with or without further comment).⁵⁹ Subject to the pressures on the Parliamentary timetable, a Select Committee will attempt to secure a debate on the floor of the House for a significant inquiry.

1.1. Powers

‘Select committees possess no authority except that which they derive by delegation from the House’.⁶⁰ Such Committees have customarily had the power to ‘send for persons, papers

⁵⁷ Erskine May (n45) 799

⁵⁸ Andrew Le Sueur ‘Parliamentary Accountability and the Judicial System’ p209 in Nicholas Bamforth and Peter Leyland (eds) *Accountability in the Contemporary Constitution* (OUP, 2013) 207

⁵⁹ Cabinet Office, ‘Giving Evidence to Select Committees: Guidance for Civil Servants’ (October 2014) 68

⁶⁰ Erskine May (n45) 799

and records' (to enable them to obtain oral and written evidence) since at least the nineteenth century.⁶¹ These powers are 'available by virtue of Parliament's role within the constitution, as a check on the power of the executive'.⁶²

Under the modern Select Committee regime, it was envisaged that Committees would obtain information through informal routes under usual circumstances and resort to a threat of sanctions only as a last resort.⁶³ Thus one pertinent issue relates to the lack of coercive powers to, for example, compel witnesses and papers or to 'enforce their will'. It has been argued that the current absence of such powers 'poses a threat to the legitimacy of select committees'.⁶⁴ Gordon and Street conclude that 'there is a clear case for creating a more comprehensive and accessible framework of select committee powers generally'.⁶⁵ A related question posed is whether it is indeed 'necessary or desirable for Parliament or select committees to have enforcement powers at all'.⁶⁶

Select Committees can be said to possess a 'soft power' – if a witness refuses an initial informal invitation he or she may be 'summoned' to attend and '[I]n most cases such a summons will be sufficient to embarrass a potential witness into appearing'.⁶⁷ The media profile of Select Committees has grown significantly in recent times⁶⁸ and a recent example which serves to illustrate the value and thus influence of Parliament's 'weapon of publicity' is that of the Murdoch family and the Culture, Media and Sport Committee Inquiry into phone-hacking.⁶⁹ According to White, in this instance, as their company News Corporation was one of the largest shareholders in BSkyB, a refusal to appear might conceivably have affected the

⁶¹ Erskine May (n45) 799

⁶² White (n5) p15

⁶³ Select Committee on Procedure (HC 1977-78, 588-I) chapter 7

⁶⁴ Richard Gordon QC and Amy Street, 'Select Committees and Coercive Powers – Clarity or Confusion?' (London, The Constitution Society, 2012) 8

⁶⁵ *ibid*

⁶⁶ *ibid* 17

⁶⁷ Hannah White, 'In contempt? Witnesses before select committees' (Institute for Government Blog, 18 April 2016) <<https://www.instituteforgovernment.org.uk/blog/contempt-witnesses-select-committees>>

⁶⁸ For discussion see Marek Kubala, 'Select Committees in the House of Commons and the Media' (2011) 64(4) *Parliamentary Affairs* 694

⁶⁹ Hannah White, 'In contempt?' (n67)

view of the regulator, Ofcom, as to whether BSkyB was 'fit and proper' to retain its broadcasting licence.'⁷⁰

Russell and Cowley have described Select Committees as having 'become a very public platform for questioning even for private sector figures'.⁷¹ Recent research, drawn upon by the Liaison Committee Report, indicates that 'although committees' formal powers are limited, there is ample evidence of policy influence... No government can afford to ignore the select committee system; the resources of committees have grown significantly in recent years, the election of committee chairs has increased independence, the Wright Reforms have aided the committees in some areas, and the current Government's relatively small majority will ensure it pays close attention to the House of Commons'.⁷² As the Report explained:

Select committees provide a political stage on which a range of salient political issues are examined, often with both drama and emotion...[I]n this sense select committees have some capacity to frame debates and influence public opinion.⁷³

Standing Orders⁷⁴ provide for the exercise of Select Committee powers, supplemented by resolutions of the House. A potential weakness might be identified when one considers the process by which Standing Orders are made and amended – they are 'orders passed by the House for regulating its own proceedings'.⁷⁵

There is no special procedure for the making of a standing order. They are carefully drafted, *in accordance with the instructions of the government so far as their substance is concerned*, by the Clerk of the House and his staff and moved, after

⁷⁰ White, 'Parliamentary Scrutiny of Government' (n5) p24

⁷¹ Meg Russell and Philip Cowley, 'The Policy Power of the Westminster Parliament: The "Parliamentary State" and the Empirical Evidence' (2016) 29(1) Governance 121, 132

⁷² Russell and Cowley cited in Liaison Committee (HC 2015-16, 470) (n39) 31

⁷³ Liaison Committee (HC 2015-16, 470) (n39) 37

⁷⁴ Standing orders are 'the second primary source of parliamentary procedure. Standing orders are orders passed by the House for regulating its own proceedings – mainly the conduct of its business but also, to some extent, the conduct of its Members and of others involved in the business of the House' - see Griffith and Ryle (n17) 6-012 for detail

⁷⁵ Griffith and Ryle (n17) 6-012

notice, by the Leader of the House. The only thing that distinguishes them from sessional orders or resolutions or other business of the House motions, is that they are normally in general terms'.⁷⁶

The potential vulnerability of the Select Committee, and particularly its powers, due to the system of Standing Orders, was explained by Graham Allen, during his tenure as Chair of the PCRC:

The advantage of a statute is that the Government must go through what they think is a very long public process of producing a Bill, whereas Standing Orders can be amended by a Government majority in the House, pretty much on a couple of days' notice. These things could therefore be changed despite the view of many parliamentarians, whereas if it is a statute, at least it's out there and we can see what they are up to ... Standing Orders are regularly suspended by Government, probably on a daily basis. The 10 o'clock rule is just nodded through as a suspension, so what's in the Standing Orders, unlike the statute, can be altered very rapidly at the whim of someone like the Chief Whip.'⁷⁷

1.2. Measuring Impact and Influence

How, if indeed they can be quantified, can impact and influence be measured?

Impact has been defined as 'an occasion on which scrutiny of policy, practice or outcomes can be identified as having had influence'.⁷⁸ Drawing an analogy with academic research the Institute for Government explains that:

It is almost never the case that the Government or another actor will change what it is doing because of a single instance of scrutiny. The effects of scrutiny (as with research) are usually multiple and overlapping and may often be delayed.⁷⁹ Actual

⁷⁶ *ibid* [emphasis added]

⁷⁷ Allen's comments during oral evidence session with Dr Malcolm Jack, Clerk of the House of Commons: PCRC, *Fixed-term Parliaments Bill* (HC 2010-12, 436) Ev 5-6, Qs 21-24

⁷⁸ White, 'Parliamentary Scrutiny of Government' (n5) p1

⁷⁹ In a parliamentary context this has been described as the 'delayed-drop' effect (Rogers, R and Walters R, *How Parliament Works*, fifth edition, 2004) cited in White (n5) p9

change is always attributable to numerous intersecting forces and influences, and therefore it would be unrealistic to claim any causal link from a single scrutiny activity.’⁸⁰

In its recent ‘Legacy Report’ the Liaison Committee asserted that: ‘[P]ublic opinion, commentators and academic critics have all recognised that select committee work is the most constructive and productive aspect of Parliament’; and ‘Select committee scrutiny is now part of the thinking of ministers and public bodies – it is the context within which they operate – and has a continuing effect in addition to the impact of specific recommendations’.⁸¹

The Public Policy Group of the London School of Economics (LSE) attempted to define impact (in that particular context in relation to a ‘research impact’) as ‘an occasion of influence’ which ‘is *not* the same thing as a change in *outputs or activities* as a result of that influence’.⁸² This approach was modified and adapted by the Institute for Government which suggested that it would define an impact of scrutiny as ‘an occasion on which scrutiny of policy, practice or outcomes can be identified as having had influence.’⁸³

At a general level, the difficulties inherent in attempting to define ‘success’ or ‘influence’ or ‘impact’ are clear, both in terms of defining individual and collective Parliamentary influence. Crick’s now infamous phrase, on the role of Parliament within the Westminster system, is worthy of mention, ‘[C]ontrol means influence, not direct power; advice, not command; criticism, not obstruction; scrutiny, not initiation; and publicity, not secrecy’.⁸⁴

Hindmoor et al refer to a number of sources which indicate that ‘it is ‘extremely difficult’ to ‘quantify conclusively the amount of influence’ committees have⁸⁵ and ‘notoriously difficult’

⁸⁰ White (n5) p9

⁸¹ Liaison Committee, *Legacy Report*, (HC 2014-15, 954) 115

⁸² LSE Public Policy Group *Maximising the impacts of your research: a handbook for social scientists* (April 2011) p21

⁸³ White, ‘Parliamentary Scrutiny of Government’ (n5) p9

⁸⁴ Bernard Crick, *The Reform of Parliament* (n29) 80

⁸⁵ Philip Norton, *Parliament in British Politics* (Palgrave Macmillan, 2005) 130 cited in Andrew Hindmoor, Phil Larkin & Andrew Kennon ‘Assessing the Influence of Select Committees in the UK: The Education and Skills Committee, 1997–2005’ (2009) 15(1) *Journal of Legislative Studies*, 71, 74

to track the fate of particular policy recommendations'.⁸⁶ An interesting observation is that the '[E]ffectiveness of parliamentary committees is largely in the eye of the beholder. Various observers will emphasise diverse and often conflicting criteria to appraise the performance of committees'.⁸⁷ The Hansard Society suggested, in 2001, that the Select Committees ought to publish a review periodically on the extent to which their 'recommendations have been implemented'.⁸⁸ Relying upon the 'extent or frequency of debate on select committee reports as a criterion of success' has been described as 'too crude' a measure.⁸⁹

The Liaison Committee review and a recent Constitution Unit study (the latter of these described as 'the most systematic quantitative assessment of select committee impact to date')⁹⁰ found that the scrutiny by select committee, and the target of committee recommendations, can stretch beyond government.⁹¹ This was interpreted by White as having potential to address a so-called 'accountability gap' (which may have arisen due to the privatisation of public services), or to influence 'Parliament itself, the judiciary, the media, political parties, interest groups, industry and the public'.⁹²

In reviewing the Education and Skills Committee, Hindmoor et al, identified the 'range of actors over whom Select Committees might be thought to exercise influence' as follows: Government (noting that 'it is with the ambition of influencing government policy that most MPs join Select Committees'); Parliament (a core objective of Select Committees is to 'assist the Commons in debate and decision'); the Media; Political Parties; and possibly interest groups.⁹³ Echoing these ideas, Monk's work (in 2010) identified a 'trend in the literature on committees in Westminster parliaments to evaluate their performance through their impact

⁸⁶ Hansard Society Commission on Parliamentary Scrutiny (n51) 34

⁸⁷ White, 'Parliamentary Scrutiny of Government' (n5) p25 citing Paul Thomas, University of Manitoba, 1993

⁸⁸ Hansard Society Commission on Parliamentary Scrutiny (n51) 39

⁸⁹ Liaison Committee (HC 1999-2000, 300) (n54) 35

⁹⁰ White (n5) 26

⁹¹ Liaison Committee, *Select Committee effectiveness, resources and powers* (HC 2012-13, 697) 13; Meg Russell and Megan Benton, 'Selective Influence: The Policy Impact of House of Commons Select Committees' (London, UCL Constitution Unit, June 2011) 67

⁹² White, 'Parliamentary Scrutiny of Government' (n5) 17

⁹³ Hindmoor et al citing Michael Jogerst, *Reform in the House of Commons: The Growth of the Select Committee System* (Lexington, KY: University of Kentucky Press, 1993) 157

on different groups such the government, media and the parliament'.⁹⁴ Monk draws together the earlier work of, inter alia, Tolley and Hindmoor to create, in his words, a 'framework for measuring committee performance'.⁹⁵ The idea Monk propounds is that, recognising that such committees are 'political bodies', the subjective responses (to the committee's work) of six relevant political groups (government and bureaucracy, legislature, stakeholders, voters and judiciary) should be collected. If one (or more) of these groups 'expresses approval of a piece of committee work, then the committee in question can argue that it has demonstrated a minimum level of influence'; the level of influence (and accordingly performance) increases where more groups support a committee report or activity.⁹⁶

In terms of the different approaches taken to evaluating the effectiveness of parliamentary committees and 'assessing the impact of parliamentary scrutiny in the UK and other countries with a Westminster-style parliament'⁹⁷ a useful summary has been compiled by the Institute for Government in which the following matters were identified:

- Those adopting a primarily quantitative methodology sought to measure impact using indicators including: the number or proportion of report recommendations accepted by government; references to reports during other parliamentary proceedings; amendments to bills made following the recommendations of reports; citations of reports in judicial decisions; and mentions in the media of select committees and their work. (For example Tolley who examined the impact on Parliament, government and the judiciary of the Joint Committee on Human Rights (JCHR) using quantitative measures, or the quantitative approach taken by Constitution Unit's report *Selective influence: The policy impact of House of Commons select committees*);
- Others have emphasised the benefits of a qualitative approach to assessing the impact of parliamentary scrutiny (for example Monk, who identified six sets of political actors whose subjective opinions, he argued, should be gathered: government, bureaucracy, the legislature, external stakeholders, the judiciary and the public. He defined positive

⁹⁴ David Monk, 'A Framework for Evaluating the Performance of Committees in Westminster Parliaments' (2009) 16 (1) *Journal of Legislative Studies*, 1

⁹⁵ *ibid* 2

⁹⁶ *ibid* 11

⁹⁷ White (n5) p25

agreement on the influence of a committee report from one of these bodies as evidence of a basic level of influence);

- Yet others have advocated a mix of qualitative and quantitative measures. (For example, Hindmoor et al).⁹⁸

2. Select Committees and the Constitution

One final aspect to be addressed in this introduction is to take a brief critical look at how constitutional reform is addressed by Parliament. To what extent is political and constitutional reform proposed by Government open to scrutiny by Parliament and, in particular, how has this task been allocated to the Parliamentary Committees?

2.1. Defining Constitutional Reform

The first inquiry and corresponding Report of the House of Lords Constitution Committee is instructive in this respect. The Constitution Committee ‘decided...to conduct this brief inquiry into what we might do and how we might go about our work...to look at the work of parallel committees in the United Kingdom Parliament and other Parliaments and how they operate. We also considered how the Government deals with constitutional matters’.⁹⁹ Then, as part of its attempt to define its own remit the Committee developed (the now oft-quoted) working definition of the British Constitution:

‘[T]he set of laws, rules and practices that create the basic institutions of the state, and its component and related parts, and stipulate the powers of those institutions and the relationship between the different institutions and between those institutions and the individual.’¹⁰⁰

⁹⁸ *ibid* p27

⁹⁹ Constitution Committee, *Reviewing the Constitution: Terms of Reference and Methods of Working* (HL 2001-02, 11) 11

¹⁰⁰ *ibid* 20

The Constitution Committee further suggested the ‘following as the five basic tenets of the United Kingdom Constitution (phrases in italics indicate subjects falling within the remit of other parliamentary committees):

- Sovereignty of the Crown in Parliament
- The Rule of Law, encompassing *the rights of the individual*
- Union State
- Representative Government
- Membership of the Commonwealth, *the European Union*, and other international organisations’.¹⁰¹

A final useful method of definition might be drawn from this Report – the Committee wanted to ensure its focus was on ‘*significant* constitutional issues’ and thus it would ‘concentrate on the “two p’s”: principal and principle. In order to be significant, a constitutional issue needs to be one that is a principal part of the constitutional framework and one that raises an important question of principle’.¹⁰² Two subsequent Reports of the Lords Committee are of particular help in terms of defining the parameters of what might be considered to be constitutional reform.¹⁰³ In its first session the Committee examined the process of constitutional change, at a time when the New Labour Government under Tony Blair had set out an ambitious programme of reforms, and identified ‘four stages of policy change: gestation, formulation, deliberation and implementation’ to help ‘give shape’ to its inquiry.¹⁰⁴ Key questions addressed in this Inquiry were: ‘To what extent is the way in which Government brings about constitutional change open and efficient? How adequate are the parliamentary means of scrutiny?’¹⁰⁵

In the more recent examination of such issues by the Constitution Committee, which coincided with the advent of Coalition Government and its respective proposals for political and constitutional reform, ‘the process of constitutional change’ was evaluated and an

¹⁰¹ *ibid* 21

¹⁰² *ibid* 22

¹⁰³ Constitution Committee, *Changing the Constitution: The Process of Constitutional Change* (HL 2001-02, 69) and Constitution Committee, *The Process of Constitutional Change* (HL 2010-12, 177)

¹⁰⁴ Constitution Committee, *Changing the Constitution: The Process of Constitutional Change* (HL 2001-02, 69)

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¹⁰⁵ *ibid* 31

attempt made to define it: 'It was common ground amongst our witnesses that, because the United Kingdom does not have a codified constitution, no watertight definition of a constitutional change to which a special process may apply can be given'.¹⁰⁶ The Report made clear that '[Not] all constitutional change is of equal significance'¹⁰⁷ and identified that there is 'a degree of subjectivity in determining what is constitutionally significant'.¹⁰⁸

2.2. Select Committees with Responsibility for Scrutinising Constitutional Reform¹⁰⁹

In line with (fairly frequent) reforms to the structure and the re-configuration of Government Departments which have a remit for constitutional reform, the relevant Departmental Committees have also been subject to re-configuration. In summary, the Department with core responsibility for constitutional matters in recent decades has been as follows: initially constitutional matters fell largely under the remit of the Home Office, as much by accident as by design; then they were the responsibility of the Lord Chancellor's Department (LCD) until 2003, when a Department for Constitutional Affairs (DCA) was created (with responsibility from 2003 – 2007). The Ministry of Justice (MoJ) has, since May 2007, had responsibility for Justice matters.

In practical terms oversight of constitutional affairs and political reform has now reverted to the Cabinet Office.¹¹⁰ This became particularly apparent under the 2010 Coalition Government with the specific remit accorded to the Deputy Prime Minister (DPM).

The LCD had been the only main Department without a separate Committee until 2002. 'It was originally excluded in 1979 on the grounds that there should not be political scrutiny of such matters as the administration of the courts and the appointment of judges. Since 1992 the remit of the Home Affairs Committee covered that department...it also covered the Law Officers'. In October 2002, a separate Select Committee was set up to cover the Lord

¹⁰⁶ Constitution Committee, *The Process of Constitutional Change* (HL 2010-12, 177) 7

¹⁰⁷ *ibid* 13

¹⁰⁸ *ibid* 14

¹⁰⁹ Discussed further in chapters two and three

¹¹⁰ Co-ordination of constitutional matters had been achieved at an official (rather than Ministerial) level prior to 2001 via the Constitution Secretariat in the Cabinet Office. This was disbanded with the creation of the Lord Chancellor's Department in 2001

Chancellor's Department leaving Home Affairs to monitor just the Home Office.¹¹¹ More recently, with the creation of the Ministry of Justice, Constitutional Reform has made its way to the Cabinet Office – appropriately positioned at the heart of Government – and has been reviewed and scrutinised by a number of Parliamentary Committees, namely the House of Lords Constitution Committee,¹¹² the (former) Public Administration Select Committee (PASC) and, from 2010-15, the Political and Constitutional Reform Committee (PCRC).

2.3. Conclusion

The issues identified during the introductory discussion, above and in the following chapter, provide the necessary theoretical framework and context in which the work of the Select Committee on Political and Constitutional Reform can be analysed and evaluated later in this thesis.

¹¹¹ Griffith & Ryle (n16) 11-002

¹¹² Appointed 'to examine the constitutional implications of all public bills coming before the House; and to keep under review the operation of the constitution' on the basis of a recommendation from the Wakeham Commission that '[T]he second chamber should establish an authoritative constitutional committee to act as a focus for its interest in and concern for constitutional matters'.

Chapter Two: An Introduction to the Parliamentary Select Committees

1. Background to Select Committees

1.1. Introduction

This chapter provides a historical overview of the development of the Parliamentary Select Committee. The intention is to set the Committees in the context of Parliamentary scrutiny and influence – primarily of and upon Government – and to discuss their purpose, terms of reference, and work programme along with developments since the establishment of the ‘departmental’ committees in 1979. It briefly traces the three main stages of development: before 1979; 1979 – 2010 (including the Norton Report and the Modernisation Committee’s work); and finally 2010 onwards. The most recent, and significant, developments being implementation of the, appropriately, much lauded, Wright Committee reforms, which also re-introduced the notion of rebalancing the relationship between the Executive and Parliament.

In 1955, Wheare claimed:

Of the many phrases by which British government may be described shortly and with illumination, such as ‘cabinet government’ or ‘parliamentary government’ or ‘party government’ or ‘constitutional monarchy’, it seems justifiable to say that by no means the least accurate and significant is ‘government by committee’.¹¹³

Whilst Wheare was referring primarily to Executive Departments of State, the same tendency applied to Parliament. Recent decades, however, have brought about a sea change, both in terms of the strengthened position of Parliament as a whole (vis a vis the Executive) and, in particular, the enhanced role played by the Parliamentary Select Committees – in terms of their considered scrutiny (of both process and substantive policy) and their contributions, albeit mostly indirect, to the initiation and development of policy. On the whole 50 years later, the following description should be considered to be more accurate:

¹¹³ Kenneth C Wheare, *Government by Committee* (OUP 1955) 1

The select committees are widely respected and seen as generally functioning well. They have won more resources in recent years. Their work on pre-legislative and post-legislative scrutiny, examination of expenditure and pre-appointment hearings is gaining ground. There is a strong desire to strengthen yet further these forums for cross-party work and government scrutiny and indeed extend the way they work to other parts of parliamentary life.¹¹⁴

According to King in 2009, 'Ministers are certainly questioned more rigorously and effectively in Commons committee rooms than in the full chamber'.¹¹⁵ This was despite the strong control still exercised by the party whips and the limited powers accorded to the parliamentary committees:

Concerns have particularly focused on the role of the whips in selecting committee members and, in practice if not formally, Chairs, as well as the powers of committees and their need for access to the Chamber agenda, where despite some improvements they remain essentially noises-off.¹¹⁶

More recently, in particular, following the important increase in independence from the whips (which also addresses the criticism in the commentary directly above), it has been argued that 'Select Committees are taken increasingly seriously by Government, and have become an established and respected part of the system'.¹¹⁷ The distinct role they perform in the overall context of Parliament today has been neatly summarised by Kelly, below:

Parliamentary Select Committees take many forms and perform a wide range of functions...they display characteristics which differ sharply from the character and culture of the legislature of which they are a part. Such committees are composed

¹¹⁴ Reform Committee (HC 2008-09, 1117) (n3) 19

¹¹⁵ Anthony King, *The British Constitution* (OUP, 2009) 333

¹¹⁶ Reform Committee (HC 2008-09, 1117) (n3) 19

¹¹⁷ Megan Benton and Meg Russell, 'Selective Influence: The Policy Impact of House of Commons Select Committees' (London, UCL Constitution Unit, June 2011) 97

almost exclusively of backbenchers;¹¹⁸ they are (relatively) well-insulated from the attentions of the party whips; they usually strive to produce unanimous reports, underpinned by cross-party consensus; unlike the chambers of the two Houses (particularly the Commons) their procedures are largely inquisitorial – based upon the taking of evidence – rather than adversarial.¹¹⁹

In the words of Tony Wright, '[T]hat is why many of us give such attention to Select Committees—we know that they offer a way of working and of dealing with issues that differs from the knockabout, custard pie approach that we take in here.'¹²⁰ For the experienced, and controversial, former Chair of the Transport Committee, Gwyneth Dunwoody: 'Select Committees are vital when it comes to finding out what the Government are doing, and why, and what they intend for the future'.¹²¹

In response to a suggestion during debate in the Commons¹²² that '[I]f the Government of the day has a majority on that Committee, it is likely that the end character and content of such reports will be biased towards the Government', Wright's response was a swift rebuttal: '[I]t is simply not my experience that Select Committees work like that. Indeed, one of the joys of Select Committees is that they do not'.¹²³ This is, indeed, one of the principal defining characteristics of the successful Select Committee – an independence of spirit and a dominant non-partisan approach. Such characteristics have been suitably bolstered by recent developments in the adoption of many of the Wright Committee proposals accompanied by a trend towards more rebellious back-benchers in recent Parliaments.¹²⁴ It is, however, worth bearing in mind that, despite the laudable achievement of (often) a high degree of unanimity in the findings and recommendations of the Select Committees, it may be that this 'has been

¹¹⁸ There are some disparities, for example, the Liaison Committee in the House of Lords

¹¹⁹ Richard Kelly, 'Select Committees: Powers and Functions' in Alexander Horne, Gavin Drewry and Dawn Oliver (eds), *Parliament and the Law* (Hart Publishing 2013) 161

¹²⁰ HC Deb 14 May 2002, vol 385, col 686

¹²¹ HC Deb 14 May 2002, vol 385, col 703

¹²² By Geoffrey Clifton-Brown

¹²³ HC Deb 14 May 2002, vol 385, col 688

¹²⁴ Philip Cowley and Mark Stuart, 'Parliament still remains on course to be the most rebellious since 1945' (Political Insight, Political Studies Association, 14 May 2013)

at the cost of avoiding some of the larger or more controversial topics...where it is known that cross-party agreement would be hard or impossible to achieve'.¹²⁵

1.2. A Brief History of the Parliamentary Select Committee

'Select committees have been used by the House of Commons for centuries to investigate, judge, assess and advise'¹²⁶ but the 'departmental' Select Committees in their modern conception, are only now nearing their fortieth anniversary, having been established in 1979.¹²⁷

The terminology employed in relation to describing and defining Parliamentary Committees has been somewhat fluid over the years, in Redlich's time a 'Select Committee' was primarily used to 'deal with the work of private bill legislation' and its task was 'investigation'.¹²⁸ Centuries earlier under the 'long parliament' (1640 – 1660) small and grand committees were appointed to various functions, including the scrutiny of Bills.¹²⁹ The smaller of these committees, 'composed of only those Members who had been specifically named by the House, became known as "select" committees. While any Member could attend select committee proceedings, only those specifically named to the committee by the House could participate in the deliberations'.¹³⁰

¹²⁵ Griffith and Ryle (n17) 13-005

¹²⁶ See, for example, discussion in the report of the Liaison Committee (HC 1999-00, 300) (n 53) where a rather diverse range of committees is referenced in a footnote, namely: 'the Committee for Uniformity of Religion (1571), the Committee for the Examination of Fees or Rewards taken for Voices in this House (1571), the Committee on the Queen of Scotts [sic] (1572), the Committee on the Confirmation of the Book of Common Prayer (1604), and the Committee on Union with Scotland (1604), as well as regular Committees on the Subsidy (the grant of money to the Crown), on Grievances, and on Privileges, and occasional Grand Committees which apparently operated rather like Select Committees (such as the Grand Committee for Evils) (1623)'

¹²⁷ Under Standing Order 130 - now Standing Order No. 152

¹²⁸ Josef Redlich, *The Procedure of the House of Commons: A Study of Its History and Present Form, Vol II* (Archibald Constable & Co, Ltd, London 1908) 187

¹²⁹ Josef Redlich, *The Procedure of the House of Commons: A Study of its History and Present Form* (A. Ernest Steinthal tr, Vol 1, Elibron Classics book, (Archibald Constable & Co., Ltd., London 1908) [accessed electronically via <<http://www.onread.com/>> preface 23

¹³⁰ Redlich, Volume II (n128) 207

The extension of Standing Committees for legislative purposes in 1907¹³¹ (under Sir Henry Campbell Bannerman) was based on recommendations embodied in reports of a Select Committee – the Procedure Committee of 1906.¹³² Since 2006, these Standing Committees have been given the, more appropriate, moniker of Public Bill Committee and are appointed under Standing Order ‘for the consideration of each bill committed to such a committee’. The Committee is then known by the name of the Bill which it is considering.¹³³ The modern-day iteration of the Procedure Committee in the House of Commons has retained this important function in terms of examining working practices and has also been influential in recommending procedural changes.¹³⁴

According to Crick, the strengths of the Select Committees in their nineteenth century iteration, when ‘they were major instruments of reform’ and ‘much important legislation was the direct result of the reports of Select Committees’, had fallen into a ‘steady decline in the numbers of Select Committees’ by the middle of the twentieth century ‘and, with a few notable exceptions, [decreased] in their importance and influence’. Crick suggested that ‘[M]ore ponderous Royal Commissions and more malleable Departmental committees have largely replaced them as investigatory bodies’.¹³⁵ This would reflect the view that the select committees ‘appeared to become more party-political’ in the early twentieth century.¹³⁶

2. Key Developments and Changes to the Select Committee System

There are essentially three main stages of development which can be identified in relation to the modern-day Select Committee system: first, pre-1979; secondly 1979 – 2010; and thirdly 2010 onwards. Gamble noted that the years from 1979 to 2010 were ‘dominated by two long periods of single party rule, and in each case the weakness of the opposition’.¹³⁷

¹³¹ House of Commons Library Research Paper 97/53, *The Commons committee stage of ‘constitutional’ bills*, (20 May 1997) 14

¹³² In particular Procedure Committee, HC 181, 1906

¹³³ Standing Order No 84A cited in Erskine May (n45) 873

¹³⁴ For example, see the discussion on ‘Bills of first class constitutional importance’ below in chapter six

¹³⁵ Bernard Crick, *The Reform of Parliament*, revised 2nd ed, 1970, 98-99 (Cox & Wyman Ltd) cited in House of Commons Library Research Paper 09/55, *The Departmental Select Committee System* (15 June 2009)

¹³⁶ Richard Kelly, ‘Select Committees: Powers and Functions’ in Alexander Horne, Gavin Drewry and Dawn Oliver (eds), *Parliament and the Law* (Hart Publishing 2013) 162

¹³⁷ Andrew Gamble, *New Labour and Political Change*, (2010) *Parliamentary Affairs* 63(4) 639

2.1. The Genesis of the Modern System of Select Committees

A precursor to the modern departmental Select Committees came about with the initiative of former Cabinet Minister, Richard Crossman.¹³⁸ As Leader of the House of Commons, Crossman introduced six Committees during the Parliament of 1966-7; these were: Agriculture; Science and Technology; Education and Science; Race Relations and Immigration; Overseas Aid and Development; and Scottish Affairs. Crossman believed that these Committees were necessary on the ground that it would improve the efficiency of Government Departments if more pressure on, and scrutiny of, them were applied by the Upper and Lower Chambers.¹³⁹ Morris, a former Leader of the House, who took credit along with Crossman for this initiative, explained that 'the advocates of specialist select committees see them as one of the principal instruments for the revival of the power and influence of the legislature in the contemporary constitutional scene.'¹⁴⁰

This was an interesting development as only three years earlier Crick had suggested that 'Ministers have grown foolishly hostile to devices which cast light on such majestic mysteries, such as investigations by Parliamentary Select Committees'.¹⁴¹ Unsurprisingly, Crossman's innovation met with opposition, from both sides of the chamber, with, 'unlikely political allies' Enoch Powell and Michael Foot believing 'a committee system to be an unacceptable distraction from the Commons chamber'.¹⁴² The incoming Conservative Government, however, under Ted Heath¹⁴³ expanded the number of Committees – thus indicating that there was indeed sufficient cross-party approval of such reform.

2.2. Select Committees in their 'Modern' Formulation

The Commons special Select Committee on Procedure, a 16 member Committee, established by the Labour government in 1976, to consider the practice and procedure of the House in

¹³⁸ Labour leader of the House of Commons 1966-68

¹³⁹ Peter Dorey, *The Labour Governments, 1964–1970* (Routledge, 2006) 173

¹⁴⁰ Alfred Morris, *The Growth of Parliamentary Scrutiny by Committee* (Pergamon Press 1970) x

¹⁴¹ Crick, *The Reform of Parliament* (n29) xvii

¹⁴² Total Politics, *Dauids that stand up to Goliath* (18 June 2009)

¹⁴³ Following the 1970 General Election

relation to public business and to make recommendations for the more effective performance of its functions, reported in 1978.¹⁴⁴ The matter of the creation of Select Committees was examined in this Report. The special Select Committee on Procedure's inquiry arose out of a wave of criticism of Parliament in relation to the relationship between the Executive and Parliament. An occasion not dissimilar to the impetus behind the most recent reforms to such committees, specific triggers then were expenses scandals and related mistrust in the institution of Parliament and its Members.¹⁴⁵ The system of Select Committees was at this stage 'unplanned and unstructured'.¹⁴⁶ The Committees were considered not to be 'an end in themselves, but...a means to secure greater surveillance of the Executive by Parliament'.¹⁴⁷

The Procedure Committee took evidence and placed significant store on its observations of the Committee system in operation in the Canadian legislature. In Canada such Committees are known as 'standing committees' ¹⁴⁸(not to be confused with the UK's Standing Committees – referred to above and, now largely and, more congruously known as Public Bill Committees)¹⁴⁹and under the standing orders of the Canadian House of Commons 'are free to initiate any studies in the exercise of their mandate and may conduct their proceedings as they see fit, provided that they do not exceed the authority vested in them by the House'.¹⁵⁰

With regards the relationship between the Executive and Legislature the Committee reported that:

¹⁴⁴ A similar Committee having been established in the House of Lords

¹⁴⁵ A series of revelations about MPs expenses were reported in the media (through a *Daily Telegraph* investigation) and led to an inquiry by the Committee on Standards in Public Life into MPs' expenses – Committee on Standards in Public Life, *MPs' expenses and allowances: Supporting Parliament, safeguarding the taxpayer* (November 2009, Cm 7724)

¹⁴⁶ Select Committee on Procedure, *First Report from the Select Committee on Procedure* (HC 1977-78, 588-I)

¹⁴⁷ *ibid* 1.12

¹⁴⁸ As we can observe from the Canadian example, in most jurisdictions 'standing committee' is used to refer to a permanent body rather than the ad hoc nature [entirely so since 1960] of the Westminster 'standing committee'

¹⁴⁹ Since 15 November 2006 (the remainder of the old Standing Committees i.e. those not specifically tasked with the examination of draft legislation became General Committees). In debate on 1 November the House approved changes to the Standing Orders were made: taking on board the Modernisation Select Committee's recommendations in *The Legislative Process* (for discussion see Jessica Levy, 'Public Bill Committees: An Assessment - Scrutiny Sought; Scrutiny Gained' (2010) *Parliamentary Affairs* 63(3) 534

¹⁵⁰ House of Commons Canada, *Committees Practical Guide* (ninth edn. Revised October 2015) 3

[T]he essence of the problem...is that the balance of advantage between Parliament and Government in the day to day working of the Constitution is now weighted in favour of the Government to a degree which arouses widespread anxiety and is inimical to the proper working of our parliamentary democracy.¹⁵¹

In reporting the Committee's recommendations to the House, Committee member Sir David Renton MP, introducing the debate, explained:

Our terms of reference were to consider the practice and procedure of the House in relation to public business and to make recommendations for —I underline these words— the more effective performance of its functions. It was the most far-reaching and thorough inquiry of its kind for over 30 years, certainly since 1946. *Although the membership of the Committee comprised almost every shade of opinion in the House, its recommendations were unanimous with regard to the main proposals.* I am sure that every member of the Committee believes that if the main recommendations are implemented it will enable Parliament to serve the nation more effectively.¹⁵²

In summary, the Procedure Committee Report contained a number of notable suggestions, primarily that: the Chairmen of Select Committees should be paid; and that the Committees should be empowered to order the attendance of Ministers to give evidence, to order the production of papers and records by Ministers, to require Government observations to be produced within two months of the date of publication of a report; and to set aside eight days per session for debates on Committee Reports. Whilst not all of these recommendations were accepted immediately, over time they have largely been implemented. The Report also recommended the establishment of a comprehensive system of 12 Select Committees to oversee the policy, administration and expenditure of each Department of State.¹⁵³

2.2.1. Motives behind the New Initiative

¹⁵¹ Procedure Committee, *First Report from the Select Committee on Procedure* (HC 1977-78, 588-I) 1.5

¹⁵² HC Deb 19 February 1979, vol 963, col 44 [emphasis added]

¹⁵³ Procedure Committee, *First Report from the Select Committee on Procedure* (HC 1977-78, 588-I)

The Conservative Party manifesto's 1979 General Election indicated support for strengthening the role of Parliament in relation to scrutiny of the Executive and stated, in a section titled 'The Supremacy of Parliament':

We will see that Parliament and no other body stands at the centre of the nation's life and decisions, and we will seek to make it effective in its job of controlling the Executive.

We sympathise with the approach of the all-party parliamentary committees which put forward proposals last year for improving the way the House of Commons legislates and scrutinises public spending and the work of government departments. We will give the new House of Commons an early chance of coming to a decision on these proposals.¹⁵⁴

A mere seven weeks after the General Election in May, Norman St John-Stevás, Leader of the House of Commons¹⁵⁵ under Margaret Thatcher's premiership, promised to introduce the Report's recommendations and said that to do so would 'redress the balance to enable the House of Commons to do more effectively the job it has been elected to do' and would redeem 'a pledge in their election manifesto...that the House should have an early opportunity to amend our procedures, particularly as they relate to the scrutiny of government'.¹⁵⁶ Thus the modern version of the Departmental Select Committees were introduced and the House was 'embarking upon a series of changes that could constitute the most important Parliamentary reforms of the century'.¹⁵⁷

St John-Stevás explained that the Government's view was that:

[T]he objective of the new Committee structure will be to strengthen the accountability of Ministers to the House for the discharge of their responsibilities.

¹⁵⁴ Conservative General Election Manifesto 1979, UK Political Info <<http://www.ukpolitical.info/1979.htm>> and <<http://www.margaretthatcher.org/document/110858>> accessed 10 January 2016

¹⁵⁵ 1979-1981

¹⁵⁶ HC Deb 25 June 1979, vol 969, col 50

¹⁵⁷ HC Deb 25 June 1979, vol 969, col 35

Each Committee will be able to examine the *whole range of activity* for which its Minister or Ministers have *direct responsibility*...The test in every case will be whether there is a significant degree of ministerial responsibility for the body concerned.¹⁵⁸

Minor concerns and questions of detail were raised by some Parliamentarians – although many of these were former Chairmen of the ‘old’ Select Committees arguing to retain the former structure (and their roles) but the lengthy debate was largely positive and indeed demonstrated a fair amount of cross-party consensus and support. There were a couple of lone voices whose criticisms were rather at odds with the general thrust of the debate, for example Gerald Kaufman MP who suggested that the potential for Committees set up to ‘shadow’ Departments coming into conflict with the Government could allow for the civil servants to play the Committee off against the Minister.¹⁵⁹ These criticisms were appropriately given short shrift. The vote on the motion to establish the new, and more formal, Select Committees was overwhelmingly in favour (at 248 to 12)¹⁶⁰ and the Committees commenced operation in early 1980. Thus the proposals and discussions on the establishment of the new Committees were characterised by wide-spread support across the House; auguring well for the future non-partisan operation of such Select Committees. From the very beginning there was an acknowledgment that whilst the Committees would have a Government majority, it would not be the case that members of the governing party would take up all the Chairmanships. St John-Stevas hoped ‘that some kind of equitable arrangement will be worked out that is fair to everyone in the House’.¹⁶¹

Cynicism and potential confusion with regards St John-Stevas’ motives, such as Drewy’s suggestion, made during an oral evidence session before the Procedure Committee, that he may have been speaking tongue in cheek ‘when he spoke about redressing the balance of power’¹⁶² were addressed by St John-Stevas himself some ten years later. He explained, in evidence to the Procedure Committee, that his aims were genuine:

¹⁵⁸ HC Deb 25 June 1979, vol 969, col 44 [emphasis added]

¹⁵⁹ HC Deb 25 June 1979 vol 969, cols 173-179

¹⁶⁰ HC Deb 25 June 1979 vol 969, col 248 – Division on the main question Ayes 248, Noes 12

¹⁶¹ HC Deb 25 June 1979, vol 969, col 217

¹⁶² Procedure Committee, *The Working of the Select Committee System* (HC 1989-90, 19-II) p232, Q645

The principal reason why I was so keen, along with many other Members of Parliament, to introduce the comprehensive system of select committees was in order to seek to redress the balance between the House of Commons and the Executive. I took the view that over the past century the balance had tilted away from the Legislature to the Executive.¹⁶³

At the time St John-Stevas had spoken of the new measure constituting ‘a decisive shift of the centre of power from Whitehall back to Westminster’.¹⁶⁴

2.2.2. The New Select Committees

The new Departmental Committees were: Agriculture; Defence; Education, Science and Arts; Employment; Energy; Environment; Foreign Affairs; Home Affairs; Industry and Trade; Social Services; Transport; Treasury and Civil Service. This provided the same number as recommended by the Procedure Committee with a minor shift in Departmental alignment – the Government proposals adopted a single Committee to shadow the Departments of Trade and Industry and a separate Committee to cover the Department of Employment.¹⁶⁵

The Departments of Industry and Trade are closely linked, both in their organisation and in their functions, since they are largely concerned with manufacturers, trades and exports. The work of the Department of Employment impinges in important respects on the Department of Industry, but it covers the whole range of employment matters and would more appropriately be a subject for a separate Committee.¹⁶⁶

One more controversial point of departure from the Procedure Committee’s proposals was in relation to the (then) Lord Chancellor’s Department and the Law Officers’ Department – these were excluded from the scope of the Select Committee on Home Affairs. The Leader of

¹⁶³ Procedure Committee, *The Working of the Select Committee System* (HC 1989-90, 19-x) p 249, Q740 as cited in David Judge, ‘The “Effectiveness” of the Post-1979 Select Committee System: The Verdict of the 1990 Procedure Committee’ (1992) 63 *The Political Quarterly* 91

¹⁶⁴ HC Deb 25 June 1979, vol 969, col 214

¹⁶⁵ HC Deb 25 June 1979, vol 969, col 38

¹⁶⁶ HC Deb 25 June 1979, vol 969, col 38

the House argued (rather unconvincingly) that the Government's view was that such a Committee could 'threaten the independence of the judiciary or the judicial process'.¹⁶⁷

In the Government's view, there would be a real danger of that if a Select Committee were to investigate such matters as the appointment and conduct of the judiciary and its part in legal administration, or matters such as confidential communications between the judiciary and the Lord Chancellor and the responsibility of the Law Officers with regard to prosecutions and civil proceedings.¹⁶⁸

It was not until January 2003 that changes to Standing Orders were made to establish a Select Committee to shadow the Lord Chancellor's Department.¹⁶⁹ It became the Constitutional Affairs Committee a year later with the subsequent departmental restructuring.¹⁷⁰ On 6 November 2007 the Constitutional Affairs Committee was renamed the Justice Committee (JSC) to reflect recent changes in the machinery of Government.

More generally, the creation of this new system of Select Committee necessitated the abolition of their more limited precursors, introduced by the previous Labour Government.

2.2.3. The Liaison Committee of Select Committee Chairman

The next significant development was the appointment of the official Liaison Committee in 1980 'consisting of representatives of the various Select Committees'.¹⁷¹ An informal version had existed since May 1967 and had helped to manage 'arrangements for Select Committee travel, the employment of specialist advisers and the avoidance of unnecessary overlap between the work of the various Select Committees'. It also acted as a 'channel of communication between successive Leaders of the House and Select Committees on a wide

¹⁶⁷ HC Deb 25 June 1979, vol 969, col 38

¹⁶⁸ HC Deb 25 June 1979, vol 969, col 38

¹⁶⁹ HC Deb 27 January 2003, vol 398, cols 677-88

¹⁷⁰ HC Deb 11 September 2004, vol 410, col 560; See discussion above at chapter one

¹⁷¹ HC Deb 31 January 1980, vol 977, col 1687

range of matters’¹⁷² but it was in January 1980 that the House agreed to amend Standing Orders and to formally establish the Liaison Committee:¹⁷³

(a) to consider general matters relating to the work of select committees, and (b) to give such advice relating to the work of select committees as may be sought by the House of Commons Commission¹⁷⁴

Membership of the Liaison Committee is not limited in number and comprises all the chairmen of the Select Committees. In 1997 it numbered 33 and in March 2017 there were 35 members of the Committee.¹⁷⁵

According to St John-Stevas, this development represented ‘a further stage in the implementation of the recommendations of the report dealing with the new Select Committee structure’. The Liaison Committee gained both profile and thus influence fairly promptly. Despite this the, then, Leader of the House of Commons¹⁷⁶ flatly rejected the vast majority of the recommendations in a key Report ten years after the Liaison Committee was established.¹⁷⁷ The next Leader of the House of Commons, Robin Cook, was, however, much more receptive to the Committee’s suggestions, and, following the approval by the Commons of the Modernisation Committee’s Report, which identified a need for and recommended a list of ‘principal objectives’,¹⁷⁸ the Liaison Committee was accorded responsibility for drawing up a list of proposed ‘core tasks’ for the departmental Select Committees. These core tasks would not limit the Select Committee’s autonomy in terms of defining their own agendas but would rather provide a set of common objectives.¹⁷⁹

¹⁷² HC Deb 31 January vol 977, col 1697-8

¹⁷³ An amendment was made, following a discussion peppered with fairly technical references to Erskine May, to include the reference to a quorum ((iv) the committee may consist of more than fifteen Members, of whom Six shall be the quorum’)

¹⁷⁴ HC Deb 31 January 1980, vol 977, col 1717-18

¹⁷⁵ Parliament.uk: <<http://www.parliament.uk/business/committees/committees-a-z/commons-select/liaison-committee/membership/>>; The Liaison Committee functions are set out in Standing Order 145

¹⁷⁶ Margaret Beckett

¹⁷⁷ Liaison Committee (HC 1999-2000, 300) (n54)

¹⁷⁸ Modernisation Committee, *Select Committees* (HC 2001-02, 224-I) 34

¹⁷⁹ Discussed further below

There is now an expectation that the Prime Minister (PM) will appear regularly before the Liaison Committee.¹⁸⁰ The Public Administration Select Committee (PASC) recommended, in 2001, that there should be an annual meeting between the PM and Liaison Committee, using the Government's Annual Report as its basis. The Report noted that Prime Ministers have traditionally rejected requests to appear before Select Committees on the ground of precedent.¹⁸¹ However, the Committee concluded that 'if it is appropriate for a Prime Minister to appear on television to answer an audience's questions on Government policy then it is surely right that the same consideration is extended to Parliament'.¹⁸² The practice of appearing before the Liaison Committee began with Tony Blair, as PM, who first appeared on 16 July 2002; apparently after a complete change of heart as he had previously declined four invitations to appear before Select Committees.¹⁸³ The current PM, Theresa May, confirmed in December 2016 that she would continue the practice of her predecessors and give evidence to the Liaison Committee three times per year.¹⁸⁴

The engineering of the regular attendance of the PM before the Liaison Committee has been hailed as a particularly significant achievement of the Select Committees which occurred largely as a result of a persistent Chairman of the PASC (and thus also a member of the Liaison Committee). In Wright's words, before this:

[T]here was a gap in that system, and that gap was the Prime Minister... We on the Public Administration Committee began to try to provide that remedy... We tried a number of stratagems and identified certain matters for which only he [the PM] was responsible, pointing out that if he did not account for them, nobody could... I was

¹⁸⁰ Now, the PM usually appears before the Liaison Committee three times per year 'to discuss matters of public policy', Parliament.uk: <<http://www.parliament.uk/business/committees/committees-a-z/commons-select/liaison-committee/prime-minister-ev-sessions/>>

¹⁸¹ Wright has pointed out that this is not entirely accurate: '...Prime Ministers used to do so [appear before committees]. The subsequent convention has developed only since the war. Indeed, it really began only because when the new Select Committee system started after 1979, Mrs. Thatcher did not want to appear before the Defence Committee in the Westland inquiry. If one scratches a convention, one will always find expediency. Ramsay MacDonald appeared before a Select Committee, as did Neville Chamberlain.' HC Deb 14 May 2002, vol 385, cols 685-6

¹⁸² PASC, *The Ministerial Code: Improving the Rule Book: Report, Proceedings and Appendices* (HC 2000-01, 235) 21

¹⁸³ HC Deb 25 March 2002, vol 382, col 618W

¹⁸⁴ Liaison Committee, *Oral evidence: The Prime Minister* (HC 2016-17, 833)

told that Prime Ministers did not do that sort of thing and did not come to the House of Commons to appear before Select Committees.

When I had exhausted my correspondence with the Prime Minister on one front, I went to the Liaison Committee and asked why we did not invite the Prime Minister to come to the House annually to account for the Government's annual report. Again, the same reply came back, saying that Prime Ministers did not do that sort of thing and that all the conventions were against it. Of course, the little tailspin was the removal of the annual report itself.

Against that background, let us notch up the achievement for this House in the Prime Minister's agreement to come and give an account to Select Committees of what he does in terms of his own responsibilities and those of government as a whole. However, in doing so, let us also be aware of the wider significance of that victory, which is that the House is not going into new territory, but reclaiming territory that it used to occupy'.¹⁸⁵

2.3. Select Committee Membership and Appointment - An Overview

It is in terms of the membership of the Select Committees that one of the most significant shifts has occurred. Select Committees have always been composed of backbench members. Until 2010 these were nominated by the Committee of Selection, which followed three general principles including 'third, that no Ministers, Whips, PPSs or principal Opposition spokesmen should be nominated to select committees'.¹⁸⁶ However, some years ago the Government relaxed the rules to allow Parliamentary Private Secretaries, the lowest (and unpaid) rung of the ministerial ladder, to sit on Select Committees. This would have been unthinkable in previous Parliaments because the bodies are meant to be independent of government. Also in the 2001 Parliament, however, the 'shortage of opposition backbenchers...led to some of them remaining on select committees when appointed as

¹⁸⁵ HC Deb 14 May 2002, vol 385, cols 685-6

¹⁸⁶ Letter from the then Chairman of the Committee to the Procedure Committee in 1990 (HC 1989-90, 19)

junior opposition spokesmen'.¹⁸⁷ More recently, in 2011, there was a controversy over a Shadow Cabinet member, Tom Watson, refusing to step down from the Culture Select Committee despite the wishes of the Chair, relying upon Parliamentary conventions.¹⁸⁸ The current iteration of the Ministerial Code states explicitly that 'Parliamentary Private Secretaries...are *not precluded* from serving on Select Committees, but they should withdraw from any involvement with inquiries into their appointing Minister's department, and they should avoid associating themselves with recommendations critical of or embarrassing to the Government'.¹⁸⁹ These reflect the guidelines provided in versions of the Ministerial Code from at least 1997 onwards.

Until 2010 the 'standard procedure for nomination of members to committees' was for a motion to be moved in the House.¹⁹⁰ The Committee of Selection for the House of Commons (established under Private Business Standing Order 109) would nominate Members to serve on General and Select Committees of the House of Commons taking into account the composition of the House and at the representation on committees as a whole 'to achieve fairness'.¹⁹¹ The selection of members from the smaller parties is dealt with by the minority party representative on the Committee. Thus membership of the Select Committees reflects the party political make-up/composition of the Commons and a Government with a majority (the usual state of affairs in the Westminster Parliament) will also have a majority in the Select Committees.

Despite the fact that the 'Departmental' Select Committees introduced in 1979 were intended to be more independent of political party and removed from the control of the whips this was not fully borne out in practice, as a result of the nomination and selection procedure adopted. The Committee of Selection, which was initially tasked with choosing the members to serve on the Select Committees, in practice was 'heavily influenced by the Whips'¹⁹² and essentially operated by taking nominations from the party Whips (and indeed included Whips of the

¹⁸⁷ Griffith and Ryle (n17) 11-010

¹⁸⁸ BBC, 'Row over Tom Watson culture committee role' (7 October 2011)

¹⁸⁹ HMG, *Ministerial Code* (December 2016) [emphasis added]

¹⁹⁰ Griffith and Ryle (n17) 11-008

¹⁹¹ *ibid*

¹⁹² Liaison Committee (HC 1999-2000, 300) (n54) 11

main parties in its number) and thus did not significantly differ from the procedure followed in choosing members for Standing Committees.¹⁹³ A former member of the Committee of Selection confirmed that '[T]here is no doubt whatever in my mind, and I was part of that, that party managers currently control Select Committee membership'.¹⁹⁴

Although the Select Committee nominations put forward by the Committee of Selection were subject to the approval of the House it was unusual for these to be rejected. On occasion, however, the House has pressed the nominations to a vote, as happened in 1987 and 1992 and more exceptionally, as in 2001, suggestions made have been rejected. Members of a Committee have also on occasion gone against the whips choice for the Chairman – a good example being the rejection of Edward Leigh as Chairman of the International Development Select Committee (seemingly because of his Roman Catholic beliefs but equally likely reflecting a desire to 'rebel' on the part of those Labour MPs who went against the party instruction).¹⁹⁵ Blair's administration was accused by the then Leader of the Opposition of 'grossly' abusing the Select Committee system, 'with its own hand-picked members on Committees to leak Committee Reports to Ministers'.¹⁹⁶

It has also been the case that:

Members have undoubtedly been kept off committees, or removed from them, on account of their views. Oppositions as well as governments have been guilty of this, but of course if committees are to be effective scrutineers of government it is the influence of the governing party that causes us the greater concern.¹⁹⁷

Examples include the, now infamous, attempt by the Labour whips to remove Gwyneth Dunwoody as Chair of the Select Committee on Transport, Local Government and the Regions

¹⁹³ Now Public Bill Committees

¹⁹⁴ Archy Kirkwood MP, in oral evidence on 11 July 2000, cited in Griffith and Ryle (n17) 11-008

¹⁹⁵ Patrick Wintour, 'Revolt blocks Catholic', *The Guardian* (19 July 2001)

¹⁹⁶ William Hague, (then) Leader of the Opposition (10 July 2000)

<<http://www.ukpol.co.uk/uncategorized/william-hague-2000-speech-on-lord-norton-report/>>

¹⁹⁷ Liaison Committee (HC 1999-2000, 300) (n54) 12

in 2001.¹⁹⁸ This led to the first defeat of Tony Blair's government – in July 2001.¹⁹⁹ In a division on the Select Committee membership, proposed by the Committee of Selection, the vote was firmly against the Government's 'favoured line-up' with Ayes 221, Noes 308.²⁰⁰ A similar result occurred in relation to the removal of Donald Anderson as Chairman of the Foreign Affairs Select Committee with the vote being Ayes 232, Noes 301 thus rejecting the Committee of Selection's nominations.²⁰¹ One needs only to read a brief extract of one of Dunwoody's obituaries to understand why, from the perspective of the Government, Dunwoody might have been an undesirable Chair:

The purpose of select committees is - at least in part - to hold the Government and others to account. This she did with a vengeance. Successive Labour ministers were understandably nervous at the prospect of appearing before her. She cast party allegiance aside.²⁰²

2.4. Proposals for Reform

The 'Norton Report' – the result of the Commission to Strengthen Parliament established by William Hague as Leader of the Opposition – recommended that appointments to Select Committees should no longer be controlled by party managers and whips.²⁰³

Hague indicated that in his view '[A]s a former member of a Select Committee, as a former Minister who has been cross-examined by them', the Select Committees 'have been 'a major success' but that 'in terms of parliamentary scrutiny, they represent the classic half full, half empty bottle'. Drawing also upon the similar conclusions reached by the all-party Liaison Committee, Hague agreed with the recommendations, of the Norton Report, to change the

¹⁹⁸ Matthew Tempest, 'Outrage over select committee sackings' *The Guardian* (11 July 2001)

¹⁹⁹ BBC News, 'Rebels triumph in sackings vote' (16 July 2001)

²⁰⁰ HC Deb 16 July 2001, vol 372, col 85

²⁰¹ HC Deb 16 July 2001, vol 372, col 80

²⁰² David Millward, 'Gwyneth Dunwoody was one of a kind' *The Telegraph* (18 April 2008)

²⁰³ The Norton Commission took evidence widely, including hearing from a former Speaker, a former head of the civil service, academics, journalists, pressure groups and MPs from both sides of the House

way members of Committees were appointed and thus to 'strengthen the work of departmental select committees'.²⁰⁴

These matters were discussed further in Parliament during an Opposition Day debate on 'Parliament and the Executive' in the week that Norton's Commission reported. William Hague, then Leader of the Opposition, referred to the Liaison Committee Report which:

proposes to give the House of Commons more teeth by taking appointments to Select Committees out of the hands of the Whips—a principle that I, too, believe would enhance the independence and reputation of Select Committees. As a party leader, I am happy to accept that principle, and I invite the Prime Minister to accept it when he responds to my speech.²⁰⁵

Hague argued that 'all parties should accept the principle, set out in the Liaison Committee report and the Norton report, that appointments to Select Committees should now be taken out of the hands of party managers'. He explained that '[I]t must be wrong that the Government, through the Whips Office, choose the people who are supposed to hold the very same Government to account'.²⁰⁶ The Government, however, was not convinced that a change to the current system was needed; this illustrates one of the inherent weaknesses in the adversarial Parliamentary system – it is usual for the Opposition to seek to 'strengthen Parliament' (particularly, as was the case at this time, when the Government has a large majority in the Commons) and also to be expected for Governments to be reluctant to relinquish power and to open itself up to greater scrutiny by Parliament.

A couple of years later, the Modernisation Committee (chaired by Robin Cook, as Leader of the House) following a review of the operation of the Select Committee system²⁰⁷ recommended that the system of nomination of Select Committee members should be revised to 'allow more autonomy to the House'.²⁰⁸ The Committee endorsed the view of

²⁰⁴ Hague, speech (n196)

²⁰⁵ HC Deb 13 July 2000, vol 353, col 1094

²⁰⁶ HC Deb 13 July 2000, vol 353, col 1094

²⁰⁷ Modernisation Committee, *Select Committees*, (HC 2001-2, 224-I)

²⁰⁸ House of Commons Research Paper 09/55, *The Departmental Select Committee System* (15 June 2009) 1.2

Lord Sheldon's evidence to it that it was crucial that 'the Executive, via the Whips, ought not to select those members of select committees who will be examining the Executive' but although it 'received a number of submissions to the effect that the members of select committees should be elected directly by the House' it 'decided not to pursue this option because election would be unlikely to produce a committee which was balanced according to experience, gender, geographical spread or of the range of opinions within parties'.²⁰⁹ Instead it recommended the creation of a 'Committee of Nomination'.²¹⁰

Cook explained:

The origin of this debate goes back to July last year when the House rebelled over the names put to it for appointment to Select Committees. There was feeling among a majority of the House that an injustice had been done to my hon. Friend the Member for Crewe and Nantwich (Mrs. Dunwoody) and my right hon. Friend the Member for Swansea, East (Donald Anderson), who had been left off Select Committees that they had chaired until the general election.²¹¹

'I have often said that good scrutiny makes for good government. I commend the package to the House as providing for better scrutiny and better government, if that is possible'.²¹² The proposals were rejected by the Commons by a vote of 209 to 195.²¹³

2.5. Next Steps

The decade or so leading up to the 2010 General Election was characterised by a weakening of respect for Parliament. For example, in the words of Donald Anderson (former Chairman of the Foreign Affairs Committee) to the House in 2001, 'Parliament is falling into some disrepute. Coverage in the newspapers has plummeted. The public has switched off, as was

²⁰⁹ Modernisation Committee, *Select Committees*, (HC 2001-2, 224-I) 10

²¹⁰ *ibid* 15

²¹¹ HC Deb 14 May 2002, vol 385, col 648

²¹² HC Deb 14 May 2002, vol 385, col 663

²¹³ HC Deb 14 May 2002, vol 385, cols 648-731

shown by the apathy during the general election.’²¹⁴ He suggested that ‘Select Committees are by far the best instrument for Parliament to be expert in dealing with experts.’²¹⁵

In 2005, *The Guardian* reported that Allen²¹⁶ had ‘suggested a system in which MPs could elect the committees, thus emphasising the key point that the committees should belong to parliament and not to the government’. This was ‘an attractive idea, and it should be examined as part of a wider review which the Speaker should establish’.²¹⁷ A series of Inquiries and Reports by the Liaison Committee and Procedure Committee and related debates in the Chamber demonstrated that there existed a clear trend in favour of reform. Two particularly dominant personalities in influential roles, Robin Cook (as Leader of the House) and Tony Wright (as Chairman of the PASC), also hastened the advent of the important reforms of 2010.²¹⁸

This all culminated in the appointment, on 20 July 2009, of the Select Committee on Reform of the House of Commons to consider and report on matters including the appointment of members and Chairs of Select Committees. The Committee’s work led to the publication of two Reports: *Rebuilding the House* in November 2009, and its successor, *Rebuilding the House: Implementation* published on 15 March 2010.²¹⁹

The new Parliament of 2010-15, under a Coalition Government, heralded the implementation of most of the reforms proposed in these Reports, known collectively as the ‘Wright Reforms’, named after the Chairman of the Reform Committee. The Coalition Agreement also included a commitment to ‘strengthen the powers of Select Committees to scrutinise major public appointments’²²⁰ which took forward recommendations of the Liaison Committee.²²¹ In the

²¹⁴ HC Deb 16 July 2001 vol 372, col 72

²¹⁵ HC Deb 16 July 2001 vol 372, col 72

²¹⁶ Allen was later Chair of the PCRC

²¹⁷ *The Guardian* Leader, ‘Commons Sense’ (6 July 2005)

²¹⁸ Similarly, two dominant reformers, Sir George Young and Graham Allen brought about the creation of the PCRC in 2010

²¹⁹ Reform Committee (HC 2008-9, 117) (n3); Reform Committee, *Rebuilding the House: Implementation* (HC 2009-10, 372)

²²⁰ HMG, *The Coalition Agreement: Our Programme for Government* (May 2010) 21

²²¹ Kelly, ‘Select Committees: Powers and Functions’, 174-8

2010 Parliament, described as a 'particularly high quality intake of new Members',²²² many new MPs took up positions on the Select Committees. That Parliament was also remarkably rebellious²²³ thus what Tyrie described as the 'whips' affliction may be part of Parliament's cure!²²⁴ He suggested that the backbenchers' rebellious nature has 'political grass-roots' and tied in with a decline in deference to the party hierarchy and the likelihood of 'balanced or positive national media coverage' of Members demonstrating independence of mind.²²⁵ A number of factors in addition to the general drive towards reform, namely, a more free-thinking approach adopted by a notable proportion of the backbenchers, the different nature of opposition and greater internal turmoil under a Coalition Government perhaps helped to construct an environment in which the Committees (and Parliament as a whole) had an opportunity to behave more conspicuously.

In a debate in June 2010 Natascha Engel, then Chair of the Backbench Business Committee, referred to Select Committees as 'not just bodies of scrutiny;...[but] also bodies of public engagement'.²²⁶ The main thread of change was simple – essentially that the, now, elected Chairs and Committee Members no longer owe their positions to the party whips and furthermore could assert that they have been elected with a clear mandate. As Tyrie explained: '[T]he cross-party proposals adopted by Parliament before the 2010 election, and implemented by the incoming Coalition Government, made them more effective and assertive in holding the executive to account'.²²⁷

One particular incident, which highlights the measure of control by the whips was in relation to a meeting in 2008 of the Parliamentary Labour Party at which a proposal made by the Chief

²²² Andrew Tyrie, 'The Poodles Bites Back: Select Committees and the revival of Parliament' (Centre for Policy Studies, 2015) 8

²²³ Research carried out by Cowley and Stuart found that the rebellion rate for the Parliament as a whole (to 2014) was a rebellion in 37% of divisions – making it the most rebellious in the post-war era. Also of 159 Conservative rebels, 91 were from the 2010 intake. For detailed discussion see Philip Cowley and Mark Stuart, 'The Four Year Itch, Or: Dissension amongst the Coalition's Parliamentary Parties 2013-14: A Data Handbook' (University of Nottingham, 3 June 2014)

²²⁴ Andrew Tyrie, 'The Poodles Bites Back: Select Committees and the revival of Parliament' (Centre for Policy Studies, 2015) 9

²²⁵ *ibid*

²²⁶ HC Deb 15 June 2010 vol 511, col 797

²²⁷ Andrew Tyrie, 'The Poodles Bites Back: Select Committees and the revival of Parliament' (Centre for Policy Studies, 2015) 2

Whip (Nick Brown) was debated, it was that ‘anyone who had voted against the party whip during the last year (amounting to over 100 MPs) would be prevented from taking up a place on a select committee when spaces become available’²²⁸ as they would not be recommended by the whips’ office. News Reports at the time highlighted weaknesses of Select Committees and noted ‘persistent criticism that departmental select committees have failed to match their American counterparts in holding the executive to account, or setting new agendas...[and] repeated examples of controversial reports by select committees either being neutered to secure unanimity, or ending up with division on key aspects between the Conservatives and Labour’.²²⁹

Writing at the end of the first full Parliament under the new Committee regime, Tyrie observed that ‘[M]ost transformed of all has been the Select Committee corridor, galvanised by the introduction of elections by secret ballot to both chairmanships and Committee memberships in 2010’.²³⁰

2.6. Chairs of Committees

Although there is not a formal rule, about the distribution of Select Committee Chairmanships between the political parties, convention dictates that ‘the allocation of chairmanships is divided among the political parties...based on the overall composition of the House’.²³¹ According to Griffith and Ryle, ‘[T]he number of chairs taken by the government side of the House and by the opposition is a matter of bargaining between government and opposition’.²³²

2.6.1. Election of Chairs

²²⁸ Philip Cowley and Mark Stuart, ‘104 MPs with reason to object’ (11 November 2008) via <www.revolts.co.uk>

²²⁹ Patrick Wintour ‘Chief whip plans to punish rebellious Labour backbenchers’ *The Guardian* (11 November 2008)

²³⁰ Andrew Tyrie, ‘The Poodles Bites Back: Select Committees and the revival of Parliament’ (Centre for Policy Studies, 2015) 2

²³¹ House of Commons Information Office, *Departmental Select Committees* (November 2009, revised August 2010)

²³² Griffith and Ryle (n17) 11-019

There was support for 'modernisation of the House of Commons... including making Select Committee processes more democratic, scheduling more and better time for non-Government business in the House'²³³ from the (then) Prime Minister Gordon Brown which was taken forward after the 2010 General Election. The new Coalition Government quickly and efficiently implemented the plans, which had cross-party support, to elect the Chairs of Select Committee by secret ballot. This alleviated the criticism which had, in the past, been levied at the role of the whips in the process.

Governments often use the chairs of committees to reward certain members, or as a consolation for not being appointed to other positions. Tenure can be uncertain. There seldom seems to be much concern with the expertise of members, or a desire to promote long-serving members of a particular committee. This can be contrasted with the practice in the US Congress, where seniority is valued and legislators are encouraged to specialize and to concentrate their energies on particular committees.²³⁴

As agreed by the House, in March 2010, following the Report of the Wright Committee²³⁵ the Chairs of most Select Committees are now (since the 2010 Parliament) elected by the whole House in a secret ballot using the Alternative Vote. They thus require cross-party support. Other Committee members are elected by their Parliamentary party groups using secret ballot.²³⁶ Using the Treasury Committee as a specific example, it has been claimed that '[E]lections have made Select Committees more responsive to the demands of colleagues across the House'.²³⁷

²³³ HC Deb 10 June 2009, vol 493, col 797

²³⁴ Gordon Barnhart, *Parliamentary Committees: enhancing democratic governance* (1999 Cavendish Publishing Ltd) 147

²³⁵ The Wright Committee was the most significant in a series of reviews of Select Committees (and other aspects of Parliamentary reform) including the 1990 Procedure Committee, the 2000 Liaison Committee and the Modernisation Committee in 2002. More recently the Liaison Committee carried out a review – *Select Committee Effectiveness, Resources and Powers* (published in November 2012)

²³⁶ HC Deb 22 February 2010, vol 506, cols 37-132; HC Deb 4 March 2010, vol 506, cols 1062-100

²³⁷ Andrew Tyrie, 'The Poodles Bites Back: Select Committees and the revival of Parliament' (Centre for Policy Studies, 2015) 16

In the first elections for the Select Committees, there were twelve committees for which a single nomination had been received – hence those Chairs were elected unopposed. In relation to the contested positions 621 ballot papers were submitted.²³⁸

In contrast, the House of Lords has not been subject to such changes and still chooses its Committee members through a Committee of Selection, which is currently composed of eleven members. It also differs in that: '[T]he places on each committee or body are distributed to the parties and groups according to precedent; in other words, each party or group generally retains the same number of Members on each committee from session to session'.²³⁹

2.6.2. Influence of the Committee Chair

'The role of a chair of a Parliamentary committee is often one of leadership, and the success of the committee often depends on the chair'.²⁴⁰ As mentioned above, Gwyneth Dunwoody, much hailed as a bastion of independent-mindedness and impartiality, was perhaps the first notably independent Chairman and 'proved to be an outstandingly forceful leader who was never afraid to criticise government policy...Despite her tribal background she was capable of obstinate independence'.²⁴¹

It is certainly as fair to say that Wright played a very prominent role in challenging the Government (his own party) during an impressive term as Chairman of the PASC - a baton seemingly passed and taken up by his successor, the Conservative MP Bernard Jenkin.²⁴² Such independence should only further improve under the new system moving away from the party machines. The loss of the whips' power of patronage over the Chairmanships of Select

²³⁸ For full detail see 'Election for Chairs of Select Committees: Result' – Parliament.uk:

<<http://www.parliament.uk/documents/commons-committees/committee-chair-election-results.pdf>>

²³⁹ Committee of Selection, *First Report of Session 2010-11*, (HL 2010-11, Paper 4) 1

²⁴⁰ Gordon Barnhart, *Parliamentary Committees: enhancing democratic governance* (1999 Cavendish Publishing Ltd) 147

²⁴¹ Obituary, *The Times* (April 18, 2008)

<<http://www.timesonline.co.uk/tol/comment/obituaries/article3773445.ece>>accessed on 31 May 2011

²⁴² Now Chair of the 'new' Public Administration and Constitutional Affairs Committee

Committees is undoubtedly a significant step towards ensuring that both Chairs and other Committee Members awareness that ‘they are accountable to parliamentary colleagues’.²⁴³

Term limits for Chairs of Select Committees are set out in Commons Standing Orders which state that an MP can chair a committee for eight years or two Parliaments, whichever is the longer.²⁴⁴ These limits were introduced in the House of Commons 2002 Standing Orders on the recommendation of the Modernisation Committee, that ‘the House should impose an indicative upper limit of two consecutive Parliaments on service as chairman’ recognising ‘that the House may wish to make special provision in the case of short Parliaments’.²⁴⁵ The Liaison Committee opposed this particular recommendation (whilst accepting many of the others relating to, for example, payments).²⁴⁶ In the debate which followed, Cook (in the unique dual role as Leader of the House of Commons and Chairman of the Modernisation Committee) reiterated the link between pay and length of service as a Select Committee Chair.²⁴⁷ The time limit was agreed, without a division.²⁴⁸

2.7. Weaknesses and Flaws in the Select Committee System – Preliminary Observations

Despite its clear successes, there are a number of weaknesses inherent in the Select Committee system, many relate to procedural issues the resolution of which are unlikely to be considered a priority for either Government (or even the House) in terms of the limited Parliamentary time available.

Criticisms have been made in relation to the lack of timeliness in appointing the Select Committees, for example, Christopher Chope described his experience when first elected as a new MP in 1983. On that occasion, he explained, ‘we waited about six months to set up the

²⁴³ Andrew Tyrie, ‘The Poodles Bites Back: Select Committees and the revival of Parliament’ (Centre for Policy Studies, 2015) 12

²⁴⁴ 122A. Unless the House otherwise orders, no select committee may have as its chair any Member who has served as chair of that committee for the two previous Parliaments or a continuous period of eight years, whichever is the greater period - Standing Orders of the House of Commons (February 2016)

²⁴⁵ Modernisation Committee, *Select Committees* (HC 2001-02, 224-I) 43

²⁴⁶ Liaison Committee, *Select Committees: Modernisation Proposals*, (HC 2001-02, 692) 27-33

²⁴⁷ HC Deb 14 May 2002, vol 385, cols 661-662

²⁴⁸ HC Deb 14 May 2002, vol 385, col 726

Select Committees and it was extremely frustrating for all.’²⁴⁹ The Liaison Committee’s review of Select Committees in 2000 noted that on ‘some occasions there have been long delays...in setting up Select Committees at the beginning of a Parliament...These delays are of course convenient for the Government of the day’.²⁵⁰ The Reform Committee noted that in both 1997 and in 2005 it ‘took a full three months, compared to one month in 2001’ to set up the Select Committees at the start of a new Parliament.²⁵¹

There remain issues with regards the speed of filling of vacancies which arise on Committees – this has often been slow ‘for no good reason’.²⁵² This matter directly relates to the even more pressing concern with the number of MPs who leave Committees to take up positions either in Government or as Shadow Ministers. A Hansard Society review of the 1997 Parliament remarked upon the ‘staggering’ turnover of membership on some Select Committees.²⁵³ In the 2008-09 session, for example, there were more than 40 instances of members being removed and replaced on committees.²⁵⁴ During its lifetime, the Political and Constitutional Reform Committee suffered from these problems to a fairly substantial extent.²⁵⁵ This is where an established Chair can help ensure continuity in the Committee’s work despite fluidity in terms of its membership; demonstrable evidence of this can be found in relation to both the PASC and PCRC. Part of the difficulty and delay in filling vacancies and replacing resigning members can be attributed to the set procedure whereby members cannot simply resign from a Committee, ‘a motion is needed in the House to discharge them and (usually) appoint a successor...[T]his can take time, particularly over a recess’.²⁵⁶

A further problem relates to Committee attendance, there is, of course poor participation on the part of some Members (such problems are not, of course, confined to Committee work but extend to the Chamber itself) however, the methods used to keep records of attendance

²⁴⁹ HC Deb 4 March 2010, vol 506, col 1084

²⁵⁰ Liaison Committee (HC 1999-2000, 300) (n54) 12

²⁵¹ Reform Committee (HC 2008-9, 117) (n3) 56

²⁵² Liaison Committee (HC 1999-2000, 300) (n54) 12

²⁵³ Hansard Society, *The Challenge for Parliament: Making Government Accountable*, (2001) 2.32 – they provided examples including the Social Security Committee with a turnover of 64% between 1997 and November 1999 and the 64% turnover of the Public Administration in the 1997-2000 session.

²⁵⁴ Reform Committee (HC 2008-9, 117) (n3) 45

²⁵⁵ Discussed further below in chapter three

²⁵⁶ Griffith and Ryle (n17) 11-008

can themselves lead to misleading results. Merely recording an individual as present is rather a blunt instrument, particularly when one recognises the existence of an unfortunate trend whereby MPs were turning up at committee meetings, asking one question and then leaving, thus ensuring that they were on the attendance register. 'You only have to turn up for five minutes to be recorded as attending' said one Select Committee Chairman. The Liaison Committee highlighted as strange 'the House's convention of recording attendance at select committees should mark a Member as present if, for example, he or she were in the committee room for only the first minute'.²⁵⁷ The members of even the longest established committees, for example the highly respected and influential Public Accounts Committee, have been shown to have an average attendance rate at meetings of merely 45 per cent.²⁵⁸

It was reported that '[S]everal backbench MPs have told The Times that they do not regard select committee attendance — which was once seen as a route to high office — as a priority' and in the words of the then chairman of the Public Administration Committee, '[T]here is no reward for being a diligent select committee member'.²⁵⁹

In 2010 a report by the Liaison Committee went as far to accuse party leaders of undermining the system by expanding the number of places and numbers of Committees which may 'result in the perverse outcome of an overall decrease in the quality of scrutiny'.²⁶⁰ At the time of this Report the average Departmental Committee had a membership of 14. A reduction in size, to an average of 11 members was proposed by the Commons Reform Committee and supported by the Liaison Committee.²⁶¹ This has since been introduced for most Committees.

The Wright Report also expressed concern about the number of places to be filled on Select Committees, which had doubled since 1979. In order to help address this 'as well as reducing the standard membership to 11, the Government have eased the strain by abolishing the

²⁵⁷ Liaison Committee (HC 1999-00, 300) (n 53) 27

²⁵⁸ Patrick Dunleavy, 'The House of Commons' Select Committees are now more independent of government. But are they any better informed?' (LSE Blog, 15 June 2010)

²⁵⁹ *The Times*, 'MPs failing to attend crucial Commons committees' (8 April 2009)

²⁶⁰ Liaison Committee, *Rebuilding the House: Select Committee Issues* (HC 2009-10, 272) 21

²⁶¹ Reform Committee (HC 2008-9, 117) (n3) 55; Liaison Committee, *Rebuilding the House: Select Committee Issues* (HC 2009-10, 272) 17-18; See reporting by the BBC, 'MPs' committees 'must be reduced in size and number' (29 January 2010)

Regional Select Committees, which has reduced the number of places to be filled by 81, and by abolishing the Modernisation Committee'.²⁶² Steps have also been taken to improve attendance rates; with an aim of at least 60 per cent attendance for each member the House endorsed a Liaison Committee recommendation:²⁶³

that where the attendance of any member of a select committee in any Session is below 60 per cent of the Committee's formal meetings, at the end of that Session the Speaker may invite the Chairman of the Committee of Selection to propose to the House that any such Member should be discharged and that an election to fill that vacancy should be held within two weeks of the beginning of the next Session.²⁶⁴

2.7.1. Reputational Matters

On the whole Select Committees, their Members, and particularly Chairs, have been held in fairly high regard with a few notable exceptions, the most recent example being the resignation of Keith Vaz as Chair of the prominent Home Affairs Select Committee as a result of his involvement with prostitutes and drugs. The subsequent appointment of Vaz as a member of the Justice Committee demonstrated what might be viewed as a necessary quirk in the system – it is for the political parties to fill vacancies through their internal processes and not for the other parties or Parliament as a whole to dictate whom is chosen. This was made explicitly clear when the House of Commons resolved, without a division, the principle recommended by the Reform Committee²⁶⁵ that the political parties should elect members of select committees in a secret ballot by whichever transparent and democratic method they choose.²⁶⁶ This can, however, lead to results which appear extraordinary. This, fortunately, tends to be the exception rather than the norm – in the instance discussed above, there was a vacancy, which had arisen as a Labour Member of the Justice Committee stepped down after appointment as a Shadow Minister and it was the normal convention for Parliament to

²⁶² HC Deb 15 June 2010 vol 511, col 786

²⁶³ Liaison Committee, *Rebuilding the House: Select Committee Issues* (HC 2009-10, 272) 16

²⁶⁴ HC Deb 4 March 2010 vol 206, col 1095

²⁶⁵ Reform Committee (HC 2008-09, 1117) (n3) 87-88

²⁶⁶ HC Deb 4 March 2010 vol 206, col 1095

approve the nominee put forward by the Labour Party to fill the, allocated, Labour party, vacancy on the Committee. An attempt by a back-bench Conservative MP to challenge the appointment of Vaz to the Committee garnered minimal support.²⁶⁷

Other examples of poor conduct include the following examples which led to the suspension of MPs. Ernie Ross, Member for Dundee West, was suspended 'from the service of the House for ten sitting days'²⁶⁸ for disclosing a draft Select Committee report on Sierra Leone (to the Foreign Secretary). In his personal statement to the House preceding his suspension he explained that the Standards and Privileges Committee had described his actions as 'a serious interference with the select committee system'.²⁶⁹ The early disclosure of the Report enabled the Government to, in the words of Sir George Young, use 'information, to which they knew they were not entitled, to denigrate a Select Committee Report *before* it was published'.²⁷⁰ Ross had previously resigned his membership of the Foreign Affairs Committee.²⁷¹ During the same parliamentary session, Kali Mountford MP was suspended for five sitting days again for disclosing a Select Committee report, in this case a Social Security Select Committee Report on child benefit and Don Touhig MP²⁷² suspended for three days for receiving and requesting.²⁷³ At the time Mr Touhig was Gordon Brown's Parliamentary Private Secretary.²⁷⁴ These appear to be the only incidents resulting in suspension with regards this matter since 1949.²⁷⁵ Nonetheless, however infrequently such events occur, they run a serious risk of damaging the public reputation of the Select Committees in a holistic manner. The recommendations of the Committee on Standards and Privileges were unanimous in stridently addressing this concern. As the Chairman of the Standards Committee explained in the House:

²⁶⁷ For a summary of the politics see BBC, 'Why MPs voted Labour's Keith Vaz on to Justice Committee' (3 November 2016)

²⁶⁸ HC Deb 12 July 1999, col 26

²⁶⁹ HC Deb 12 July 1999, col 23

²⁷⁰ HC Deb 12 July 1999, col 26 [emphasis added]

²⁷¹ See Select Committee on Standards and Privileges, *Premature Disclosure of Reports of the Foreign Affairs Committee*, Eight Report, Annex B Letter from Mr Ernie Ross MP to the Chairman of the [Foreign Affairs] Committee, 23 February 1999 (HC 1998-99, 607)

²⁷² HC Deb 21 Oct 1999, col 600

²⁷³ Select Committee on Standards and Privileges, Tenth and Eleventh Report (HC 1998-99, 747)

²⁷⁴ Reported by the BBC, 'MPs suspended over leak' (21 October 1999)

²⁷⁵ But see Matthew Moore, 'WikiLeaks: Select committee report leaked to US before publication', *Daily Telegraph* (3 February 2011)

It is...of the greatest importance that the work of Select Committees investigating the operation of Government Departments is not obstructed by outside interference. The premature release of a draft report is a most serious matter because outside involvement with the report's conclusions might be attempted at that stage. If there were any suspicion that such practices existed, the standing of our whole Select Committee system could be questioned.²⁷⁶

In 2009 the Liaison Committee 'agreed a restatement of procedure to be followed by select committees of the House when dealing with sensitive papers'.²⁷⁷ This followed an incident in which two research assistants were suspended following the unauthorised disclosure of a select committee paper. The secretariat had not applied the 'appropriate marking to the document' and had 'circulated the document as an attachment to an e-mail without protecting it and without drawing attention to its sensitive nature'.²⁷⁸

One final example is that of the apology made by Tony Baldry to the House for a breach of the Code of Conduct for Members as Chairmen of Select Committees albeit a breach falling short of exploiting his position, as (then) Chairman of the International Development Committee, to further his private interests. This followed allegations in *The Sunday Times*.²⁷⁹

3. Overview – Current Operating Methods and Procedures

'Select committees today are as established a part of Westminster life as Prime Minister's Questions' according to a recent Institute for Government Report, authored by Andrew Tyrie, who was described as 'the most powerful backbencher in the House of Commons when Chair of the Treasury Select Committee'.²⁸⁰ Tyrie sees the key role of Committees to secure 'government by explanation' whereby 'the executive is required to explain its proposals and

²⁷⁶ HC Deb 21 October 1999, col 601

²⁷⁷ HC Deb 8 June 2009, vol 493 col 529

²⁷⁸ HC Deb 8 June 2009, vol 493 col 529

²⁷⁹ HC Deb 21 Jul 2005, vol 436, col 1429

²⁸⁰ Donald MacIntyre, 'Andrew Tyrie: The most powerful backbencher in the House of Commons' *The Independent* (London, 2 April 2013)

justify its actions’ and suggests that this is ‘largely what is meant by...scrutiny’.²⁸¹ When performed well, ‘forcing the Government to explain can mean persuading it to think again...Better quality explanations, and the knowledge that they will be tested in Parliament, should therefore provide better quality Government’ and thus ‘Select committees can force government to fill the explanations deficit’.²⁸²

The now infamous phrase, attributed to Balfour, ‘democracy is government by explanation’ is frequently quoted in relation to the role and importance of the function of scrutiny whereby Parliament acts as a ‘critical friend’ to Government. The rationale for this is inherent both in the institutional structure of the Westminster model, whereby (as discussed above) Parliament performs a vital function in, where necessary, encouraging government to ‘think again’ on policy proposals but also the intrinsic value in that better scrutiny (both within government and outside) leads to ‘better’ decisions and policies which are more reasoned and more robust.

The knowledge that Parliamentary scrutiny awaits can and should influence policy formation in Whitehall. For each public governmental re-think, there may have already been five behind the scenes, triggered or influenced by the instruments of Parliamentary scrutiny, even before they are deployed.²⁸³

The Procedure Committee of 1989-90 made reference to both direct and indirect scrutiny as ‘the touchstones of committee success.’²⁸⁴ Here was an implicit acknowledgement that, despite setting out to evaluate the effectiveness of the scrutiny carried out by Select Committees, the policy influence of the departmental Committees, as highlighted in evidence in the Report, comprised a significant, and increasingly important, dimension of the Select Committees’ work.

The Procedure Committee noted that:

²⁸¹ Andrew Tyrie, ‘Government by Explanation’ (Institute for Government, April 2011) 6

²⁸² *ibid* 10

²⁸³ *ibid* 6

²⁸⁴ Cited in David Judge, ‘The “Effectiveness” of the Post-1979 Select Committee System: The Verdict of the 1990 Procedure Committee’ (1992) 63 *The Political Quarterly* 91 p93

[S]ome of the early rhetoric [for example St John Stevas' comments about redressing the balance]²⁸⁵ about a radical shift in power away from the Executive to the House was not helpful, in that it raised wholly unrealisable expectations. It thus risked devaluing in advance the genuine achievements which the departmentally-related Select Committees can now claim.²⁸⁶

As Judge explains, drawing upon the evidence given to the Procedure Committee, these 'genuine achievements' were supported by 'almost unanimous agreement amongst witnesses' appearing before the Committee 'that the Committees had achieved more systematic, comprehensive and rigorous scrutiny of executive actions than was the case either with the pre-1979 Select Committees or with the present activity on the floor of the House'.²⁸⁷ The Liaison Committee noted that '[A] determined and hard-working committee, in which Members are prepared to devote substantial effort and put the interests of the citizen and taxpayer first, can be extraordinarily effective'.²⁸⁸ This assessment can be directly contrasted with the description by Giddings, in an early review of the 'new Select Committees', now almost thirty years ago, which indicated that '[t]he effect of these committees on ministerial and departmental policymaking has been indirect and marginal, contextual rather than substantive'.²⁸⁹ In order to fully realise this result, however, party loyalty must slip down the Members' list of priorities.

²⁸⁵ Discussed above

²⁸⁶ Procedure Committee, *The Working of the Select Committee System* (HC 1989-90, 588-I) – cited in David Judge, 'The "Effectiveness" of the Post-1979 Select Committee System: The Verdict of the 1990 Procedure Committee' (1992) 63 *The Political Quarterly* 91, 92

²⁸⁷ David Judge, 'The "Effectiveness" of the Post-1979 Select Committee System: The Verdict of the 1990 Procedure Committee' (1992) 63 *The Political Quarterly* 91, 92

²⁸⁸ Liaison Committee (HC 1999-2000, 300) (n54) 9

²⁸⁹ Philip Giddings, 'What has been achieved?' in Gavin Drewry (ed) *The New Select Committees* (Clarendon 1989) 376

Philip Norton's description of the introduction of Departmental Select Committees as constituting 'the most important reform of the latter half of the twentieth century; possibly of the whole century',²⁹⁰ has been picked up by academics in other European States.²⁹¹

3.1. Departmental (Subject Specific) Committees

The Departmental Select Committees are today appointed under Standing Order No. 152 (Select Committees related to Government Departments). There are currently 19 'Departmental' Select Committees.²⁹² The original batch having numbered 14; as consecutive PMs and Governments re-shuffle, combine, disband and create Departments the number of Committees will correspondingly alter. The structure and denomination of these Committees is relatively fluid, mirroring whichever Government Departments exist at any one time. An interesting current (and temporary) example is that of the Exiting the European Union Committee which 'examines the expenditure, administration and policy of the Department of Exiting the European Union'. Departmental Committees may change (in name only) from time to time – such as the transformation of the Children, Schools and Families Committee to the Education Committee in May 2010 to reflect the Department's name change.

The function of the Departmental Select Committees is three-fold: '... to examine the expenditure, administration and policy of the principal government departments'. The Committees are 'sessional' which essentially means they are re-appointed every session.²⁹³ The Parliamentary Select Committees undertake inquiries; they hold one-off evidence sessions which may encompass both written evidence (including exchanges of correspondence) and oral evidence; they may go on visits and 'fact-finding' expeditions.

²⁹⁰ Philip Norton, *Parliament in British Politics* (Palgrave Macmillan 2005) 28

²⁹¹ *Parlamente, Agendasetzung und Vetospieler: Festschrift für Herbert Döring, Ingvar Mattson - Parliamentary Organisational Design for Governmental Accountability in Sweden*, Steffen Ganghof, Christoph Hönnige and Christian Stecker (eds) (VS Verlag, 2009) p187

²⁹² For full list of Committees see Parliament.uk:

<<http://www.parliament.uk/business/committees/committees-a-z/commons-select/>>accessed on 7 April 2017

²⁹³ The orders of appointment are made on a single motion

A series of 'core tasks' or 'common objectives'²⁹⁴ for the select committees were proposed by the Liaison Committee and agreed in 2002.²⁹⁵ The Liaison Committee has responsibility for keeping the 'core tasks' under review and revision of the core tasks was prompted by a Hansard Society Report (as was the introduction of the core tasks initially)²⁹⁶ which called for 'greater definition of the core tasks...ensuring that they are making the best choices possible about what policy areas and bodies to scrutinise, and providing some form of accountability and transparency for those choices'.²⁹⁷ Following its Report on *Select committee effectiveness, resources and powers* the Liaison Committee found that 'the core tasks are a little out of date' and 'envisage that the scrutiny of expenditure, administration and policy are separate activities... it is increasingly important that committees assess policy decisions alongside their financial implications, and vice versa'.²⁹⁸

Moreover, now that Chairs and members of committees have an elected mandate from the House, select committees are increasingly proactive in their efforts to influence the strategic direction of government and its departments.²⁹⁹

The Liaison Committee thus proposed the revised core tasks, for the Departmental Select Committees, which were approved by the House of Commons in early 2013. These provide a framework against which one can begin to analyse the work of the Select Committees, and have been used as such in some recent studies.³⁰⁰ Some Select Committees, including the PCRC, have utilised the core tasks to carry out self-evaluation.³⁰¹ These revised core tasks are set out below:

²⁹⁴ HC Deb 14 May 2002 vol 385, cols 648-726 – debate on the Report of the Liaison Committee, *Select Committees: Modernisation Proposals* (HC 2001-02, 692) where House invited the Liaison Committee 'to establish common objectives for select committees'

²⁹⁵ Liaison Committee, *Annual Report 2002* (HC 2002-03, 558) 13

²⁹⁶ Hansard Society Commission on Parliamentary Scrutiny (n51)

²⁹⁷ Alex Brazier and Ruth Fox, 'Reviewing Select Committee Tasks and Modes of Operation' (2011) 64(2) *Parliamentary Affairs*, 354, 361

²⁹⁸ Liaison Committee, *Select committee effectiveness, resources and powers* (HC 2012-13, 697) 17

²⁹⁹ *ibid* 19

³⁰⁰ For example, Lucinda Maer and Mark Sandford, 'Select Committees under Scrutiny' (Constitution Unit, July 2004)

³⁰¹ Discussed below

- *Overall aim* To hold Ministers and Departments to account for their policy and decision-making and to support the House in its control of the supply of public money and scrutiny of legislation
- *Strategy* Examine the strategy of the department, how it has identified its key objectives and priorities and whether it has the means to achieve them, in terms of plans, resources, skills, capabilities and management information
- *Policy* Examine policy proposals by the department, and areas of emerging policy, or where existing policy is deficient, and make proposals
- *Expenditure and Performance* Examine the expenditure plans, outturn and performance of the department and its arm's length bodies, and the relationships between spending and delivery of outcomes
- *Draft Bills* Conduct scrutiny of draft bills within the committee's responsibilities
- *Bills and Delegated Legislation* Assist the House in its consideration of bills and statutory instruments, including draft orders under the Public Bodies Act
- *Post-Legislative Scrutiny* Examine the implementation of legislation and scrutinise the department's post-legislative assessments
- *European Scrutiny* Scrutinise policy developments at the European level and EU legislative proposals
- *Appointments* Scrutinise major appointments made by the department and to hold pre-appointment hearings where appropriate
- *Support for the House* Produce timely reports to inform debate in the House, including Westminster Hall, or debating committees, and to examine petitions tabled
- *Public Engagement* Assist the House of Commons in better engaging with the public by ensuring that the work of the committee is accessible to the public

At this juncture it is worth also considering the classic functions of parliamentary committees as described by Wheare: 'committees to advise, committees to inquire, committees to negotiate, committees to legislate, committees to administer, and committees to scrutinize

and control'. He suggested that the Select Committees (and others) be categorised as 'committees to inquire'.³⁰²

3.2. An Alternative Career Path to Ministerial Office?

'Some have long held the view that it is crucial to create a parliamentary career path focussed on select committee work'³⁰³ and in recent times it has been suggested that the Select Committees can provide an increasingly viable alternative career path to the Ministerial ladder dependent upon patronage. The notion of an alternative career for ambitious back-benchers was raised in debate in the Commons almost 40 years ago:

'...the essential feature of these reforms is that the House of Commons must provide what one might loosely call a different career structure....Many Members quite honourably desire to be members of the Government or want to get something out of them. Therefore, the Government's position on the Floor of the House is very powerful. For many other Members, the position of the press in the Gallery is the other attraction. One goes either for the publicity or for the Government.

*However, there ought to be a further attraction, which is for those people who wish to make the House of Commons function as a control of the Executive or a watchdog over them in its own right. That should be a powerful attraction.*³⁰⁴

And in a similar vein Douglas Hogg MP (son of the then Lord Chancellor, Lord Hailsham) commented, in his maiden speech:

In the past, most hon. Members who wished to make a positive contribution to debate and the conduct of public affairs tended to look to the hierarchy within their party for preferment...I suspect that this placed some restraint upon their ability and willingness

³⁰² 'As examples of...committees to inquire I consider again principally bodies acting on behalf of the central government -- royal commissions, select committees of the House of Commons, departmental and inter-departmental committees.' Wheare, *Government by Committee* (n113) 2

³⁰³ Reform Committee (HC 2008-09, 1117) (n3) 19

³⁰⁴ Fred Silvester MP, HC Deb 25 June 1979, vol 969, col 146 [emphasis added]

to act independently of the party line. I hope and believe that the existence of this kind of Select Committees will provide an alternative career for those seeking to make a positive contribution to the conduct of public affairs. I think that that is likely to increase people's independence of action and of thought.³⁰⁵

In recognition of the fact that adding a financial incentive to the position of Chair would contribute to this alternative career path, to the Ministerial route, some years later the Liaison Committee, in reviewing the operation of the Select Committee System, invited the Senior Salaries Review Body (SSRB) to consider the matter of paying Chairmen. This was in response to a wish that MPs would begin to 'see service on Select Committees as a career path which, in terms of status and influence, will be a proper reward for their hard work and commitment'.³⁰⁶ The Liaison Committee noted that the Royal Commission on the Reform of the House of Lords recommended that 'Chairmen of significant Committees of the second chamber should receive a salary in respect of their additional duties'.³⁰⁷ Such suggestions had previously been made by the Wakeham Commission - Recommendation 123 was that 'Chairmen of significant Committees of the second chamber should receive a salary in respect of their additional duties'³⁰⁸ and the Hansard Society, which suggested not only that 'MPs chairing Committees should receive a salary equivalent to that of a Minister' but also that 'key posts on Select Committees should be paid'.³⁰⁹ Lord Norton of Louth's Commission to Strengthen Parliament – set up by the Conservative Party in Opposition - which reported in 2000,³¹⁰ recommended that 'Committee Chairmen be paid the same as Ministers of State, and, in some cases, Cabinet Ministers'.³¹¹ In 2002 the Modernisation Committee noted that there was no consensus on whether Select Committee Chairman should receive salaries but also recommended 'that the value of a parliamentary career devoted to scrutiny should be recognised by an additional salary to the Chairmen of the principal investigative committees'.³¹²

³⁰⁵ HC Deb 25 June 1979, vol 969, col 191

³⁰⁶ Liaison Committee (HC 1999-2000, 300) (n54) 30

³⁰⁷ Liaison Committee (HC 1999-2000, 300) (n54) 32 citing Cm 4534 (January 2000) Recommendation 123

³⁰⁸ Cabinet Office, *Royal Commission on the Reform of the House of Lords* (Cm 4534, 2000) 17.12

³⁰⁹ Hansard Society Commission on Parliamentary Scrutiny (n51) 2.34

³¹⁰ The Commission to Strengthen Parliament, *Strengthening Parliament* (n21)

³¹¹ Norton 'Reforming Parliament in the United Kingdom' (n2) 8

³¹² Modernisation Committee, *Select Committees*, (HC 2001-02, 224-I) 41-42

In any event salaries for Chairmen of Select Committees were not introduced until 2003 and subsequently further rolled out.³¹³ The House approved a motion setting pay at a level of £12,500, recommended by the SSRB from the beginning of the 2003-04 session, for:

Chairman of a select committee appointed under Standing Order No. 152 (Select Committees related to government departments), the Environmental Audit Committee, the European Scrutiny Committee, the Committee of Public Accounts, the Select Committee on Public Administration, the Regulatory Reform Committee, the Joint Committee on Human Rights or the Joint Committee on Statutory Instruments.³¹⁴

The additional salaries of Select Committee Chairs, as now set by the Independent Parliamentary Standards Authority (IPSA), were £15,025 as of April 2015.³¹⁵ Press reports considered that recent reforms had had a notable impact, and that the election (by MPs) of Committee members ‘gives them clout and independence’ and claimed that ‘[F]or many Westminster observers, Parliament has been revived since the last election. The select committees have played no small part in that’.³¹⁶

3.3. Civil Servants and Select Committees

In the 1960s it could be said that ‘officials never testify on anything except ‘accounts’’.³¹⁷ The civil servants’ role today is rather different – the protection of anonymity no longer absolute if indeed it exists at all. One need only look to the unfortunate exposure of David Kelly as the BBC ‘source’ with regards Iraq and claims of the existence of Weapons of Mass Destruction; an exposure sanctioned by the (then) Prime Minister, Tony Blair.

³¹³ To include further Committees, including newly created Committees such as the PCRC (HC Deb 7 June 2010, col 148) and the Backbench Business Committee (HC Deb 15 June 2010, col 846)

³¹⁴ HC Deb 30 October 2003, vol 412, cols 505-7

³¹⁵ Reviewed and confirmed following a consultation (*Reviewing Pay for Chairs of Committees*) by IPSA in May 2016 – see Independent Parliamentary Standards Authority, *Pay for Chairs of Committees: Final Report* (May 2016)

³¹⁶ BBC News, ‘The new breed of select committees offers MPs an alternative career structure’ (11 January 2013)

³¹⁷ Richard Neustadt ‘White House and Whitehall’ cited in Anthony King, *The British Constitution* (OUP, 2009)

The Select Committees can question and hold to account officials – for whom guidance is provided in the ‘Osmotherly Rules’– as well as Ministers (although, of course, due to the convention of Ministerial Responsibility, the officials are, in effect, not truly personally accountable but rather giving evidence ‘on behalf of their Ministers and under their directions’).³¹⁸ Crick has written of ‘many and topical’ worries about control of the executive; including ‘the apparent confusion, perhaps even breakdown, in the accepted notions of Ministerial responsibility’.³¹⁹ The Liaison Committee picked this matter up in 2012, observing that:

The old doctrine of ministerial accountability...is being stretched to implausibility by the complexity of modern government and by the increasing devolution of responsibility to civil servants and arm’s length bodies. It is important that Parliament should be able to hold to account those who are in reality responsible.³²⁰

This Report preceded the most recent iteration of the Osmotherly Rules (re-issued in 2014) with ‘little radical change’³²¹ but whilst the Liaison Committee noted that the Parliament was still not bound by the rules (these are Whitehall’s own rules about giving evidence to Parliament) in practice Select Committees had ‘constructive’ relationships with Government Departments which took committees ‘seriously’ and engaged positively with them.³²²

As identified above,³²³ Select Committee powers include the sending for persons to appear as witnesses and for papers and records to be sent to them to scrutinise. But the two exceptions to these might be said to make them rather toothless: first the Royal family (which is unlikely to cause much consternation in this context) and, secondly and crucially the Government, both in terms of demanding the attendance of ministers and the provision of Government papers. Tyler has described the ‘constitutional nonsense’ of his having ‘observed

³¹⁸ Cabinet Office, ‘Giving Evidence to Select Committees: Guidance for Civil Servants’ (October 2014) 9; The Osmotherly Rules were first issued in May 1980 by EBC Osmotherly, a civil servant in the Cabinet Office.

³¹⁹ Bernard Crick, *The Reform of Parliament* (n29) 2

³²⁰ Liaison Committee, *Select Committee effectiveness, resources and powers* (HC 2012-13, 697) 114

³²¹ Although there is now a reference to ‘Senior Responsible Owners’

³²² Liaison Committee, *Legacy Report* (HC 2014-15, 954) 14-16

³²³ Chapter one

select committees forced to resort to the Freedom of Information Act to get hold of government papers, and still be refused them'.³²⁴

³²⁴ Christopher Tyler, 'Three simple ways to strengthen our parliamentary democracy' *The Guardian* (4 March 2011)

Chapter Three: The Political and Constitutional Reform Committee

Politicians love committees, but generally, their tendency to create them should be resisted...[T]here is, though, one type of committee we should embrace warmly while working to make more effective – the Commons select committee.³²⁵

1. Introduction and Contextual Background

The PCRC was established in the context of a Hung Parliament and a Coalition Government which was itself unusual; add to this the wide-ranging, yet thematic, nature of its inquiries and a Committee of particular note emerges.

The first tranche of reform, in 1979, in terms of the contemporary Select Committees occurred at a time when there was widespread public distrust of and discontent with Parliament; a similar scenario provided the backdrop to the Coalition Government's programme for political and constitutional reform which was intended to restore people's faith in their politics and politicians after the expenses scandal of 2009. If, as has been suggested,³²⁶ only a wholesale reform of the political system will suffice to address these issues and repair the system, a debate around the desirability or otherwise of constitutional codification was certainly timely and, the PCRC was perfectly positioned to inform, encourage and facilitate this debate through its work.

Thus the 2010 General Election brought about something other than simply the unusual situation of a hung Parliament; the composition of the subsequent Coalition appeared to herald a genuine focus on constitutional reform. It is, of course, sensible to assume that this was in part the result of the Liberal Democrats as the junior partner in the Government, representing a political party which possessed at its core a desire for constitutional reform.

³²⁵ Peter Luff MP, 'The Challenges for Scrutiny' (Departmental Select Committees – 30 Years of Scrutiny Conference - Hansard Society/Study of Parliament Group, London, 23 June 2009)

³²⁶ See, for example, Richard Gordon, *Repairing British Politics - A Blueprint for Constitutional Change* (Hart Publishing, 2010) and Francesca Klug, 'Political impasse proves need for a written constitution' *The Guardian* (11 May 2010)

Indeed, it may prove to be the case that the Liberal Democrat party was dependent upon such reform, particularly in the area of electoral matters, for its survival as a viable player on the political scene.³²⁷ It was understood that, as DPM, Nick Clegg had, whatever the underlying motives, insisted upon a policy brief in relation to democratic change³²⁸ and was promptly accorded 'special responsibility for political and constitutional reform'.³²⁹ It therefore became viable to argue, as Sir George Young (then Leader of the House) and Graham Allen (subsequently Chair of the PCRC) did, that 'Parliament was under some obligation...to set up a monitoring Committee for political and constitutional reform'.³³⁰ Concerns could also justifiably be raised that without a new Committee, compared to other Cabinet ministers, scrutiny of the DPM would be inadequate. Hence, in June 2010, the PCRC was established.³³¹

The Committee created to reflect 'the new portfolio of the Deputy Prime Minister'³³² was unique – it might be described as 'semi-departmental' rather than clearly 'cross-cutting'. Distinct from those Committees tasked with examining the 'expenditure, administration and policy' of specific Government Departments, yet more concentrated in focus than the overarching, cross-departmental Public Accounts or Environmental Audit Committees, the PCRC was aligned to the work of an individual Minister. This in itself was something of a novelty but coupled with the Committee's prolific output (publishing 43, often lengthy, Reports in five years)³³³ and the influence of an experienced Chair with a genuine interest in the field of constitutional reform, suggests that there are lessons to be learned from the work of the PCRC.

³²⁷ One might suggest that, at least in part, this drive for reform in the constitutional sphere arose from a belief that constitutional reform, particularly that relating to the electoral system, would benefit the Liberal Democrats' (traditionally third-placed) national position disproportionately in terms of the impact it would be expected to have on the two 'main' parties in the Westminster Parliament: the Conservative Party and the Labour Party. Would electoral reform in the shape of Alternative Vote have prevented the crippling loss of seats the Liberal Democrats faced at the 2015 General Election?

³²⁸ Private Interview with Graham Allen (Chair of the PCRC 2010-15)

³²⁹ Deputy Prime Minister - Role and responsibilities as per <www.cabinetoffice.gov.uk> accessed 19 May 2011

³³⁰ Private Interview with Graham Allen (Chair of the PCRC 2010-15)

³³¹ A 'sessional' committee established in June 2010, 'to consider political and constitutional reform, scrutinising the work of the Deputy Prime Minister in this area'

³³² David Heath MP (Deputy Leader of the House) HC Deb 7 June 2010, vol 511, col 137

³³³ See List of Publications at Appendix B

The DPM was accompanied by a junior Minister for Political and Constitutional Reform and together they were given a remit for reforms which were ‘wide-ranging’ and aimed to ‘restore people’s faith in their politics and politicians’.³³⁴ The junior Ministerial role was undoubtedly affected in a negative sense by frequent reshuffles – the post changed hands four times in the 2010 Parliament – in addition to some reconfiguration of the detail and scope of the position. Mark Harper (Conservative MP for the Forest of Dean) was the first ‘Minister for Political and Constitutional Reform’ (until September 2012) and Sam Gyimah was the last holder of the position of ‘Parliamentary Secretary (Minister for the Constitution)’ from July 2014 to May 2015.³³⁵ The PCRC’s experience of dealing directly with numerous Ministerial changes informed the PCRC’s inquiry into ‘The impact and effectiveness of ministerial reshuffles’.³³⁶

1.1. Coalition Constitutional Conflicts

An interesting area of ideological conflict between the parties making up the Coalition Government was around codification (complete or partial) of the British Constitution; the Liberal Democrats had long argued the case for a constitution, for example in a 2010 manifesto pledge³³⁷ to ‘[I]ntroduce a written constitution...[with the content determined] by a citizens’ convention, subject to final approval in a referendum’.³³⁸ The Conservatives, on the other hand, had reiterated in their 2010 manifesto that ‘the UK does not have a written constitution’³³⁹ – they had no plans to produce one should they regain power.

It was certainly the case that the Liberal Democrats in Coalition Government ensured that constitutional reform, in a variety of hues, was given prominence; an attack on proposals for

³³⁴ In clear recognition of the context (which had arguably resulted in a Hung Parliament) of a loss of confidence in the institution of Parliament and MPs following the wave of expenses scandals

³³⁵ Other holders of this Ministerial post were: Chloe Smith, Minister for Political and Constitutional Reform (September 2012 - October 2013); the Rt Hon Greg Clark MP, Minister of State for Cabinet Office (Cities and Constitution) (October 2013 – July 2014).

³³⁶ PCRC, *The impact and effectiveness of ministerial reshuffles* (HC 2013-14, 255)

³³⁷ In the fifth manifesto since 1979 where they have made similar commitments

³³⁸ Liberal Democrats, *Manifesto 2010, Change that works for you, Building a Fairer Britain*, 88

³³⁹ The Conservative Party, *Invitation to Join the Government of Britain*, Manifesto 2010, p114

House of Lords Reform followed shortly after the Alternative Vote referendum defeat.³⁴⁰ Over the 2010 Parliament, as a result, in part, of the nature of the Coalition, ideas and discussion around constitutional codification have risen up the agenda both within Parliament and outside.³⁴¹ This provided an atmosphere which was conducive to the Committee's long-term approach to examining the British Constitution over the full five-years of its term. It is difficult to clearly determine cause and effect in this regard as the Committee's work, and the relatively high external profile it achieved, is likely to have been a significant contributory factor to bringing about this discussion on codification. Many of the reforms (actual, or proposed and rejected) of the 2010 Parliament have had, or might be expected to have, the largest impact upon Parliament itself, particularly in terms of strengthening the community of backbenchers, for example:

- the Referendum on changing the voting system (for the Westminster Parliament) and House of Lords Reform both potentially affecting the composition of the legislature and the methods by which members become a part of it;
- Fixed-term Parliaments;
- the wholesale changes to constituency boundaries;
- the creation of a Backbench Business Committee;
- changes to the Departmental Select Committees;
- regulating the lobbying industry; and
- the role of Parliament in relation to war powers/armed conflicts.

1.2. Constitutional Innovations and Peculiarities of the 2010 Parliament

The first Parliamentary session under Coalition Government lasted significantly longer than the average yearly session, and was in itself a constitutional innovation, albeit one with a view

³⁴⁰ Following the country-wide referendum, the first of its kind since 1975, on 5 May 2011 where on a turnout of 42%, 67.9% of voters opposed changing the electoral system to the Alternative Vote. For detail see House of Commons Library Research Paper 11/44, *Alternative Vote Referendum 2011: Analysis of results* (19 May 2011)

³⁴¹ See, for example, Richard Gordon, *Repairing British Politics - A Blueprint for Constitutional Change* (Hart Publishing, 2010) – which Gordon intended to provide a starting point for a debate on the subject of codification.

to practicalities and pragmatism,³⁴² being part of a plan to permanently move the State Opening of Parliament from autumn to spring to tie in with the introduction of fixed-term parliaments.³⁴³ It was announced in autumn 2010 that the current session of Parliament would run until ‘around Easter 2012’ and Government would ‘then review the options for moving onto spring to spring annual sessions’.³⁴⁴

These developments follow something of a pattern developed over the past 30 years or so in terms of constitutional reform, with the ‘modernisation’ of the House and wider constitutional reform programme under the New Labour Government started by Tony Blair, and continued in some measure by Gordon Brown during his tenure as PM.³⁴⁵ There has been a gradual, but crucially important, shift in the balance of power between the Executive and Parliament to the extent that it would now be inaccurate to describe the House of Commons as a ‘toothless adjunct of an all-powerful Executive’.³⁴⁶

2. The Genesis of the Committee on Political and Constitutional Reform

The idea of creating a Select Committee to consider Political and Constitutional Reform was developed after the Coalition document had been drawn up and it became evident that the Coalition Government’s ‘Programme for Government’ included proposals for significant reforms and constitutional change, many of which had not been anticipated in the political parties’ respective Election Manifestos (particularly that of the majority partner in the Coalition, the Conservative party). Nor, of course, did the Government’s plans and proposals for reform have any clear electoral mandate: ‘[B]y its nature, the policies of a coalition government have not been endorsed by the people’.³⁴⁷

³⁴² In an emergency debate on the matter requested by Denis MacShane (See HC Deb 13 September 2010, vol 515, cols 614-19) Rosie Winterton described the awarding of huge power to the Executive by ‘extending the time in which to get their legislation through ‘as being effectively, ‘an abuse of power’’ (HC Deb 13 September 2010, vol 515, col 616)

³⁴³ See chapter six below for discussion of the Fixed-term Parliaments legislation

³⁴⁴ HC Deb 13 September 2010, cols 33-34 WS

³⁴⁵ See, for example, Gordon Brown, *The Governance of Britain* (Cm 7170, 2007)

³⁴⁶ Liaison Committee (HC 1999-2000, 300) (n54) 106

³⁴⁷ PCRC, *Lessons from the process of Government formation after the 2010 general election* (HC 2010-11, 528-I) 53

Pertinent concerns regarding accountability and the lack of a clear mandate and solid consensus around constitutional reform were voiced by the Chairman of the Lords' Constitution Committee, Baroness Jay of Paddington, who upon announcing the launch of a wide-ranging inquiry into the process of constitutional reform explained:

We don't think that it is acceptable that far-reaching constitutional changes are introduced to the UK in ad hoc ways. That is why we want to look at what the UK's constitutional reform processes should be.³⁴⁸

Ought not those policies which affect the 'constitution', the structure of governance and the means of accountability and scrutiny, be all the more subject to detailed examination? The creation of the PCRC added a Committee with democratic legitimacy, lacking in the Lords Committees, and a different perspective to specifically examine constitutional matters.

The nature of Coalition Government 'makes full pre-legislative scrutiny and proper consultation on those policies [which affect the constitution, the structure of governance and the means of accountability and scrutiny] all the more important'.³⁴⁹ It is in the area of large structural change or constitutional reform that consensus should play a vital part. In this context, a clear mandate should exist. Perhaps the lack of a clear 'winner' in the General Election of 2010 reflected such a desire for change, not from the Parliamentarians but the electorate. Regardless of whether one agrees with this suggestion or not, it is another matter entirely to demolish centuries-old constitutional edifices without a more specific mandate; this is one reason why the PCRC had such a crucial role to play in scrutinising, challenging and holding to account the Minister charged with the Constitutional Reform portfolio.

2.1. Establishing the Political and Constitutional Reform Committee

³⁴⁸ Constitution Committee News Release, 'Constitution Committee Launches new Inquiry' (23 February 2011)

³⁴⁹ PCRC, *Lessons from the process of Government formation after the 2010 general election* (HC 2010-11, 528-I) 53

As was always the case with the creation of Select Committees, and remains so despite the marked improvements in their autonomy brought about by the Wright reforms,³⁵⁰ the Parliamentary Committees, including the PCRC, are brought into being by the Executive. It was thus upon the Executive which the Committee depended for its continued existence. It is something of a paradox that despite the role of Select Committees as 'now the principal mechanism through which the House of Commons holds the executive to account'³⁵¹ the creation (and abolition) of such bodies remains at the whim of the Executive.

On 3 June 2010 a motion was put down on the Order Paper (without notice)³⁵² which was intended to establish the PCRC without debate.³⁵³ The Leader of the House, explained that this was intended to meet the Government's thinking that 'it would be helpful to the House for that Select Committee to be elected at the same time as all the other Select Committees and to get it up and running quickly.'³⁵⁴ In response to this Christopher Chope MP³⁵⁵ asked about the possibility of having a debate on the 'proposal to set up the Political and Constitutional Reform Committee, rather than having it go through on the nod later this evening?'³⁵⁶ Chope also suggested that the Committee be a Joint Committee composed of both MPs and Peers. Following such objections to the creation of the Committee and concerns regarding cost³⁵⁷ a debate was held the following Monday.³⁵⁸ Questions were raised as to why the Committee was not thought of initially when all the original Select Committees were being set up: '[W]hy, in other words, does it appear to be an afterthought?'³⁵⁹

³⁵⁰ Discussed above - chapter two

³⁵¹ Alex Brazier and Ruth Fox, 'Reviewing Select Committee Tasks and Modes of Operation' (2011) 64(2) Parliamentary Affairs, 354

³⁵² David Heath MP (Deputy Leader of the House of Commons) HC Deb 3 June, vol 511, col 137: 'Motion 3 will establish a Select Committee on Political and Constitutional Reform, which reflects the new portfolio of the Deputy Prime Minister. Motion 4 will provide for the Chair of the Committee...to be elected from among the Labour Members of the House in accordance with the distribution of Select Committee Chairs that you indicated at the beginning of the Parliament, Mr Speaker. Motions 5 and 6 will provide for the Chair of the Select Committee to be paid.'

³⁵³ HC Deb 3 June 2010, vol 510, col 688 – Motion made

³⁵⁴ HC Deb 3 June 2010, vol 510, col 582

³⁵⁵ Who, of course, shortly afterwards became a member of the Committee

³⁵⁶ HC Deb 3 June 2010, vol 510, cols 581-2

³⁵⁷ Peter Bone suggested Select Committees cost around £500,000 per year to run – HC Deb 7 June 2010, vol 511, col 139

³⁵⁸ HC Deb 7 June 2010, vol 511, cols 136-148

³⁵⁹ HC Deb 7 June 2010, vol 511, col 144

An ‘afterthought’ it may have been but it proved to be a Committee poised to make an important contribution in the crucial area of Parliamentary and constitutional reform. In an early interview, the Committee Chair suggested that ‘[I]n just four or five weeks we have seen a rebalancing of parliament...but I for one would like to see that going further.’³⁶⁰

The PCRC was established as a ‘bolt-on’, under Temporary Standing Orders, which the Committee Chair would later describe as ‘its fatal weakness’.³⁶¹ Its terms of reference empowered it to ‘to consider political and constitutional reform’³⁶² but made no direct reference to the DPM. This in itself is interesting: the Committee’s terms of reference were less specific than the role discussed and attributed to the Committee during the debate about its establishment, which had concluded that this Committee should be established, to consider political and constitutional reform, scrutinising the work of the DPM in this area.³⁶³ In the debate agreeing to the Temporary Standing Order and establishment of the Committee it was explained that the Committee ‘reflects the new portfolio of the Deputy Prime Minister’.³⁶⁴ The PCRC therefore had potentially extremely wide scope to examine the extensive range of matters falling within its remit and to set its own agenda. This was borne out in the variety of inquiry undertaken. The consistent themes running through the work of the Committee, and of particular relevance to this study, include the over-arching structural reform of constitutional codification: particularly apparent in the PCRC’s commissioning of ‘research on “mapping the path to codifying – or not codifying - the UK’s constitution” for future consideration by the Committee’.³⁶⁵

Yet, one inherent weakness of the PCRC was observed during the Commons debate on establishing the Committee where it was argued that ‘[I]f it were a departmental Select

³⁶⁰ Michael Savage, *The Independent*, ‘Give me Parliament with muscle, reform watchdog tells Clegg’ (19 June 2010)

³⁶¹ Private Interview with Graham Allen (Chair of the PCRC 2010-15); Standing Orders of the House of Commons Public Business 2011 – the PCRC was appointed with the same powers – to send for persons and papers, to undertake visits and report to the House – as Departmental Select Committees

³⁶² As per ‘New Temporary Standing Order (Political and Constitutional Reform Committee)’ Addendum to the Standing Orders of the House of Commons relating to Public Business (23 June 2010)

³⁶³ See ‘Role of the [PCR] Committee’ at parliament.uk

³⁶⁴ David Heath MP HC Deb 7 June 2010, vol 511, col 137

³⁶⁵ PCRC, *Formal Minutes* (14 July 2010) and PCRC, *Formal Minutes* (16 September 2010) – agreed research from the Centre for Political and Constitutional Studies, King’s College London.

Committee, it would deal with all the activities and responsibilities of that Department, including, most importantly, that Department's budget'.³⁶⁶ Although the PCRC was not specially tasked with financial scrutiny there was nothing to preclude it examining finances within the Cabinet Office and it kept a 'watching brief' on such matters.³⁶⁷ Furthermore the Committee commissioned research by the National Audit Office on expenditure relating specifically to the Government's programme of political and constitutional reform.³⁶⁸

There were concerns raised at an early stage regarding overlaps with and duplication of the work of other Select Committees; this, of course, is not a problem which is specific to the PCRC. It is true that 'Committees interpret their own remits, so overlap can and does happen.'³⁶⁹ The nature of the subject matter under inquiry by the PCRC (the constitution; Parliament, and political reform) does, however, lend itself much more to overlap than that of a Departmental subject specific Committee's work is likely to. Even in the realm of the subject specific Departmental Committee overlaps do still occur with relative frequency. One example (which is relevant in terms of this study of the PCRC) is the matter of Parliamentary involvement in the decision to engage in armed conflicts. At one level waging war and engaging in international conflicts comes under the remit of the Defence Committee but the role of both the Executive (specifically the Prime Minister) in terms of exercising Prerogative Powers and whether or not Parliament should be involved in decisions to engage troops in armed conflict involve a much wider range of interests – as can be seen from the work of the PCRC³⁷⁰ and previous inquiries by the PASC.³⁷¹

In terms of the magnitude of the matters at issue it is crucial that there is not, nor should there be, any one body which has sole 'ownership' of the constitution. Overlap from the point of view of different approaches to scrutiny and from different perspectives, both within Parliament and outside, is thus not only unavoidable but to be welcomed, within reason.³⁷²

³⁶⁶ Chope (subsequently a member of PCRC) HC Deb 7 June 2010, vol 511, col 143

³⁶⁷ Private Interview with Committee Clerk

³⁶⁸ Liaison Committee, *Select committee effectiveness, resources and powers* (HC 2012-13, 697-II) Ev w41, 2

³⁶⁹ Private Correspondence with Committee Clerk

³⁷⁰ PCRC, *Parliament's role in conflict decisions*, (HC 2010-12, 923); PCRC, *Parliament's role in conflict decisions: Government Response to the Committee's Eighth Report of Session 2010-12* (HC 2010-12, 1477)

³⁷¹ PASC, *Taming the Prerogative: Strengthening Ministerial Accountability to Parliament*, (HC 2003-04, 422)

³⁷² See below discussion concerns above extensive overlaps with the work of the Constitution Committee

3. Other Parliamentary Committees on Constitutional Matters

The PCRC's remit coincided at various times with that of several other 'constitutional' committees in both the Commons and the Lords, namely the PASC,³⁷³ the Constitution Committee, the Justice Committee (the only truly 'Departmental' Select Committee in this list) and, by inquiring into and taking evidence from the UK Bill of Rights Commission,³⁷⁴ potentially also with the Joint Committee on Human Rights (JCHR). In relation to the potential for 'overlap between the Justice Committee, the Select Committee on Public Administration and the proposed [Political and Constitutional Reform] Committee' it was suggested that '[W]e could have the absurd situation in which three Select Committees look at the same item and produce three reports'.³⁷⁵ It was also observed that 'there is the whole question of human rights' where further overlap might occur'.³⁷⁶ Although the Deputy Leader of the House, David Heath attempted to clarify these matters in the debate³⁷⁷ the explanations were rather superficial and only partially addressed Members' concerns.

Indeed, in the first session of the 2010 Parliament, three, of the five aforementioned, Committees held Inquiries into, and produced Reports on the same subject: the draft Cabinet Manual.³⁷⁸ In the Lower Chamber, these were the PASC³⁷⁹ and the PCRC³⁸⁰ and, in the Upper Chamber, the Constitution Committee.³⁸¹ In the first months of the 2010 Parliament multiple

³⁷³ Since 2015 the PCRC has been subsumed into the 'new' PASC – the Public Administration and Constitutional Affairs Committee (PACAC)

³⁷⁴ See PCRC, *UK Bill of Rights Commission* – UNCORRECTED TRANSCRIPT OF ORAL EVIDENCE (9 June 2011) - To be published as HC 1049-I

<<http://www.publications.parliament.uk/pa/cm201012/cmselect/cmpolcon/uc1049-i/uc104901.htm>>; and PCRC, *UK Bill of Rights Commission* – written evidence 9 June 2011 (Both accessible via <<http://www.parliament.uk/business/committees/committees-a-z/commons-select/political-and-constitutional-reform-committee/inquiries/uk-bill-of-rights-commission>>)

³⁷⁵ HC Deb 7 June 2010, vol 511, col 139

³⁷⁶ HC Deb 7 June 2010, vol 511, col 142

³⁷⁷ By explaining that those responsibilities of the Justice Minister which had passed to the DPM would hence no longer be within the remit of the Justice Committee and similarly whilst the 'Office of the DPM' was based within the Cabinet Office only his "*specific political responsibilities*" would fall under the new Committee's scrutiny with the rest of the Cabinet Office operations remaining with the PASC – HC Deb 7 June 2010, vol 511, col 144

³⁷⁸ HMG, *The Cabinet Manual – Draft (A guide to laws, conventions and rules on the operation of government)*, December 2010

³⁷⁹ PASC, *Cabinet Manual* (HC 2010-12, 900-I)

³⁸⁰ PCRC, *Constitutional Implications of the Cabinet Manual* (HC 2010-11, 734-I)

³⁸¹ Constitution Committee, *The Cabinet Manual* (HL 2010-11, 107-I)

Reports were also published on the *Fixed Term Parliaments Bill*,³⁸² and on the *Parliamentary Voting Systems and Constituencies Bill*,³⁸³ notwithstanding that such analysis of 'constitutional' legislation falls directly within the remit of the Lords' Constitution Committee to assess 'the impact of a Public Bill and, where appropriate, publishes a report on the Bill to inform the House.'³⁸⁴ In terms of work the PCRC had no substantive overlap with regards the Justice Select Committee. In relation to the Joint Committee on Human Rights duplication has occurred only in so far as the JCHR is tasked with commenting on the compliance of legislation with the European Convention of Human Rights³⁸⁵ (for example, as it did with the *Fixed-Term Parliaments Bill*).

3.1. The House of Lords Select Committee on the Constitution

This is where the greatest overlap occurs – primarily as a result of the Constitution Committee's expansive interpretation of its remit, which could, in theory (particularly since the advent of the PCRC), be largely confined to examine the constitutional implications of legislative measures, as per its terms of reference: 'To examine the constitutional implications of all public bills coming before the House; and to keep under review the operation of the constitution'.³⁸⁶ The (first) Minister for Political and Constitutional Reform, Mark Harper, however, announced that he was 'sending the draft legislation [on Electoral Provisions]³⁸⁷ to the Political and Constitutional Reform Committee for pre-legislative scrutiny'.³⁸⁸

Within the first 12 months of the 2010 Parliament, three of the Constitution Committee's four inquiries covered similar territory to that of inquiries undertaken by the PCRC. These were in relation to the *Fixed-term Parliaments Bill*, the *Parliamentary Voting and Constituencies Bill*, and the Cabinet Manual.

³⁸² Constitution Committee, *Fixed-term Parliaments Bill* (HL 2010-11, 69-I) ; Political and Constitutional Reform Committee, *Fixed Term Parliaments Bill* (HC 2010-11, 436-I)

³⁸³ PCRC, *Parliamentary Voting System and Constituencies Bill* (HC 2010-11, 422-I); Constitution Committee, *Parliamentary Voting System and Constituencies Bill* (HL 2010-11, 58-I)

³⁸⁴ Parliament.uk, Constitution Committee – role:

<<http://www.parliament.uk/business/committees/committees-a-z/lords-select/constitution-committee/role/>>

³⁸⁵ See also s 19 *Human Rights Act 1998*

³⁸⁶ Constitution Committee, *Reviewing the Constitution: Terms of Reference and Method of Working* (HL 2001-2, 11) 1

³⁸⁷ HMG, *Further Draft Electoral Administration Provisions*, Cm 8177 (September 2011)

³⁸⁸ HC Deb 14 September 2011, vol 532, cols 46-47WS

Inquiries were also held on the process of constitutional reform by both the PCRC and the Constitution Committee³⁸⁹ and both Committees investigated lobbying, Scottish devolution/independence and recall of MPs. Whilst an element of overlap is understandable and entirely unavoidable, duplication to this extent - three-quarters of the Constitution Committee's work clearly overlapping with the PCRC's work programme - was a matter to be closely monitored. In future years, fortunately, the extent of the duplication of work diminished.

3.2. The Public Administration Select Committee

There was a further element to consider in relation to the other Select Committee with a specific role in relation to the work of the Cabinet Office, namely the PASC. Over the previous decade, under the Chairmanship of Wright this had been a Committee which interpreted its remit widely and held a range of varied inquiries (at times seemingly beyond its remit with regards regulatory aspects and the standards of administration).

Bernard Jenkin, the Chairman of the PASC during the 2010 Parliament, appeared initially to be steering the Committee back towards its original purpose – that of playing the role more as a regulatory watchdog. However, as time has progressed the PASC with Jenkin at the helm has been pro-active and inventive. Jenkin personally played an active role in the debates on the Government's 'constitutional' legislation, making a significant contribution to the second reading of the *Fixed-Term Parliaments Bill* in particular.³⁹⁰ As an individual he appears to be independent-minded; a very positive characteristic to be found in the Chair of a principal Select Committee.

The aligned interests of the PCRC and the PASC were essentially merged following the dissolution of the 2010 Parliament after which the 'constitutional affairs' aspect of the PCRC's remit was transferred to the newly-created Public Administration and Constitutional Affairs Committee. This revised Committee's role is to examine 'constitutional issues and the quality

³⁸⁹ Constitution Committee, *The Process of Constitutional Change* (HL 2010–12, 177)

³⁹⁰ See below chapter six

and standards of administration within the Civil Service. It also scrutinises the reports of the Parliamentary and Health Service Ombudsman'.³⁹¹ Bernard Jenkin was (re)appointed as Chair of this Select Committee and several former members of the PCRC were selected as its members.³⁹²

3.3. Delegated Powers and Regulatory Reform Committee

The key role of this Committee is to examine Bills before the Lords and report on powers proposed to be delegated to Ministers. The Committee also examines Legislative Reform Orders (LROs) laid under the Legislative and Regulatory Reform Act 2006. As with the JCHR above, overlaps occur infrequently here and only in so far as the DPRR Committee has commented (and suggested) amendments to legislation³⁹³ where the power is delegated.

4. Avoiding Excessive Overlap between the Work of Committees

Informally the Committee clerks and chairs talk to each other to try to be aware of forthcoming overlap and 'to deal with it sensibly and consensually'. Formally, although it is rarely used, the Liaison Committee provides a channel for resolving overlap amongst Commons Committees. There is no equivalent mechanism for dealing with Lords Committees.

Select Committees (in both Houses) can (and from time to time do) meet together to take evidence and to deliberate.³⁹⁴ They have the power to work together; they can 'hold concurrent meetings with one or more Commons select or sub-committees, and any committee of the House of Lords. In practice, however joint meeting and working of committees is rare. This is because of the level of co-ordination, support and time required to organise and staff such a committee'.³⁹⁵

³⁹¹ 'Role of the Committee': <<http://www.parliament.uk/business/committees/committees-a-z/commons-select/public-administration-and-constitutional-affairs-committee/role/>>

³⁹² Namely Andrew Turner and Paul Flynn

³⁹³ See chapter six

³⁹⁴ Potentially a sensible option for inquiries where there is significant overlap not only of subject matter but also of actual witnesses

³⁹⁵ Lucinda Maer and Mark Sandford, *Select Committees under Scrutiny* (The Constitution Unit, July 2004)

A further consideration, beyond that of potentially wasted time and resources with excessive duplication of work, is that there will, on occasion, also be opportunities where conflicting views arise as a result of Committee inquiries and Reports. This may, of course, be positive in that it should draw attention to important and controversial matters and encourage debate but equally such a conflict could be (ab)used by government to 'cherry pick' whichever views or Report best suits their purposes.³⁹⁶

5. Committee Membership

The members and, principally the Chair of a Committee, are widely acknowledged as being crucial in shaping its approach and style - this accordingly plays an important part in determining the effectiveness of the work carried out by the Committee and indeed the level of co-operation it receives from those with whom it works, for example, witnesses giving evidence during inquiries.

It is thus important to consider the personalities making up a Committee and to consider the role played by members of a scrutinising body, in this case the PCRC, both collectively and as individuals. In terms of the latter, whilst not the focus of this study, it would be wrong to ignore entirely contributions made to Parliament, whether in terms of speeches in debates, to tabling EDMs³⁹⁷ or tabling amendments to legislation. As with the influence of the Committee as a whole, it is difficult to measure the influence of its individual members in any exact and tangible manner, but it is of interest nonetheless.

Two correlated facets should be borne in mind: first, to what extent have the individual members increased their contributions (and/or the value of those contributions) as a result of knowledge and expertise gained whilst being a member of the Committee; and secondly, to what extent is it because of their individual interests and expertise that led them to serve (and/or be chosen to serve) upon the Committee itself.

³⁹⁶ For an example of this see chapter six below, with regards to the *Fixed-Term Parliaments Bill* and specifically the question around the length of a Parliament following an early election

³⁹⁷ See, for example, EDM 79 (2010-12 session) 'Legislation for Fixed-term Parliaments' tabled by Christopher Chope

5.1. Membership of the PCRC

An amendment to the Standing Order allowed for the election of the Chair of the PCRC.³⁹⁸ Allen faced competition for the position of Chair (which was allocated to the Labour party)³⁹⁹ from fellow MPs Hywel Francis⁴⁰⁰ and Fiona Mactaggart and after succeeding in the ballot, Allen was elected as the Chair of the Committee on 9 June 2010, in accordance with Standing Order 122B.⁴⁰¹

The membership⁴⁰² of the PCRC consisted of five Labour MPs (including the Committee Chair, Graham Allen MP for Nottingham North), five Conservative MPs, and one Liberal Democrat. This was consistent with the composition of the Parliament in terms of party breakdown and the overall number of committee members following the standardisation of the size of select committees through the Wright Reforms.⁴⁰³ As discussed below and elsewhere, the Committee suffered from frequent changes of membership. The membership at dissolution, in March 2015, included only two of the original members, one of whom was the Committee Chair.⁴⁰⁴ As became apparent early in the 2010 Parliament, under the new system of elections for Select Committee Chairs the influence of the political party machine through the whips has lessened.⁴⁰⁵ An interesting and rather unexpected result of the elections for Select Committee members by their own parties (also introduced for the first time in 2010) was the remarkably high number of new MPs appointed to Select Committees. This occurred in both the largest two parties in the Commons with commentators remarking, at an early stage in

³⁹⁸ See Addendum to the Standing Orders - 23 June 2010 - New Parliament

³⁹⁹ Specifically allocated to a member of the Labour party rather than to 'a member of Her Majesty's Official Opposition' See HC Deb 7 June 2010, vol 511, cols 139 and 147

⁴⁰⁰ Francis was later a member of the JCHR

⁴⁰¹ Allen was elected as Chair on Wednesday 9 June 2010 – after two rounds in the ballot despite having received 277 votes in round one (this was insufficient despite being a crystal clear lead over the other three nominees - Dr Hywel Francis (102); Fiona Mactaggart (124); and Alan Whitehead (63) – as the AV system would have required 283 votes i.e. half of the total 566 valid first round votes cast). Allen received 295 votes in the second round and was subsequently elected. See House of Commons, Votes and Proceedings, 10 June 2010

⁴⁰² Initial members were appointed by the Commons on Monday 12 July 2010

⁴⁰³ As a result of the Wright Reforms, the vast majority of Select Committees now have a membership of 11 (there are a few exceptions such as the Public Accounts Committee, which has 14 members and the JCHR which can have 12 members – six from each Chamber)

⁴⁰⁴ See Appendix C for details of membership

⁴⁰⁵ Although by the end of the 2010 session it will still be too early to conclusively determine how much impact this has had – particularly when one considers the 'new' swathe of MPs who have not experienced the pre-2010 system

the process, that '[M]ore than a dozen newly-elected Labour MPs have been elected by their colleagues to serve on Commons select committees'.⁴⁰⁶ For the Conservative Party it was even more striking - '[O]f the 82 elected yesterday, just 13 were experienced MPs – 84 per cent of Tory select committee members (not chairs) are new members'.⁴⁰⁷ With regards specifically to the PCRC, almost half its membership was composed of new MPs; five⁴⁰⁸ of the eleven members were MPs who entered the House for the first time at the general election in 2010.

Of the longer standing Parliamentarians it is very interesting to observe that on an analysis of the most 'rebellious'⁴⁰⁹ Conservative MPs, one year into the coalition government, two of the 'top ten' rebels were members of the PCRC⁴¹⁰ (a third was the new Chairman of the Public Administration Committee).⁴¹¹ Particularly interesting when it is remembered that in the sense that MPs on the Government's back-benches are a vital part of the continuing success of a Government, they have been described as 'pivotal voters' at Westminster.⁴¹²

It appears that there is a delicate balance to be struck between ensuring (or rather attempting to ensure) a constant trickle of fresh blood and renewal to the Committees whilst retaining a core of experience and knowledge.

5.1.1. Attendance

The sessional returns provide a picture of a very mixed rate of attendance - overall attendance in 2010-12 was fairly high at 70 per cent. This fell to just under 60 per cent (59.9) in 2012-13 and further to 54 per cent in 2013-14. The results are somewhat skewed by substantial

⁴⁰⁶ 'New MPs Elected to Select Committees', *Epolitix* (24 June 2010); FT Blog, 'The new boy: Class of 2010 dominates select committees' (24 June 2010)

⁴⁰⁷ 'New intake dominates select committees', *Epolitix* (25 June 2010)

⁴⁰⁸ Originally four but increased to five 'new' MPs with the addition of Yasmin Qureshi in July 2011 (Qureshi failed to attend a single session (0 out of 9 during her membership) and was 'discharged' in December 2011)

⁴⁰⁹ In terms of voting behaviour in the 286 divisions to date – see Jonathan Isaby for ConHome 2 June 2011 <<http://conservativehome.blogs.com/parliament/2011/06/conhome-identifies-the-most-rebellious-tory-mps-during-the-coalitions-first-year.html>>

⁴¹⁰ Christopher Chope and Andrew Turner

⁴¹¹ Bernard Jenkin

⁴¹² Keith Krehbiel, *Pivotal Politics: A Theory of US Lawmaking* (University of Chicago Press 1998) cited in Meg Russell and Philip Cowley, 'The Policy Power of the Westminster Parliament: The "Parliamentary State" and the Empirical Evidence' (2016) 29(1) Governance 121

disparities in attendance – for example, in 2013-14, the Chair and one other Committee Member⁴¹³ attended 85 per cent of the sessions but this might be contrasted with an attendance rate of 0 per cent on the part of two other Members (neither of who were on the Committee for the whole session). The mean attendance on the part of individual Committee Members in the 2013-14 session was 50.06 per cent. In 2012-13 the mean attendance was 59.83 per cent.

In order to provide a snapshot of the early days – before the (usually annual) sessional returns were published in spring 2012⁴¹⁴ – the Committee's Formal Minutes⁴¹⁵ were used to get a picture of the attendance rates of the Committee as a whole and in terms of its individual members after their first 12 months of existence.⁴¹⁶ As noted elsewhere, accurately measuring attendance in a meaningful manner is complex and further complicated by the changes in committee membership and vacancies at times.⁴¹⁷

5.1.2. Vacancies and Replacement Committee Members

Closely aligned with matters of attendance, there were numerous and frequent changes of membership within the PCRC, including several changes within the first year of the Committee's inception. Nick Boles, the Conservative MP for Grantham and Stamford⁴¹⁸ who became PPS to Nick Gibb (as Minister of State for Schools); Catherine McKinnell, the Labour MP for Newcastle upon Tyne North⁴¹⁹ who became Shadow Solicitor-General; and Sir Peter Soulsby who stood down⁴²⁰ to stand for election as Leicester's first Mayor (a position to which he was subsequently elected on 5 May 2011) all left the Committee in its inaugural year.

⁴¹³ Paul Flynn

⁴¹⁴ Because of the extended parliamentary session 2010-12

⁴¹⁵ PCRC, Formal Minutes (2010-12): <<http://www.parliament.uk/business/committees/committees-a-z/commons-select/political-and-constitutional-reform-committee/formal-minutes/>>

⁴¹⁶ See table in Appendix C

⁴¹⁷ For example, for a Labour member from 1 April to 12 July 2011.

⁴¹⁸ HC Deb 1 November 2010, vol 517, col 738 – Boles discharged from the Committee and Andrew Griffiths added (Business without debate)

⁴¹⁹ HC Deb 8 November 2010, vol 518, col 106 – McKinnell discharged from the Political and Constitutional Reform Committee and Fabian Hamilton added

⁴²⁰ By accepting the office of Steward and Bailiff of Her Majesty's Manor of Northstead

There was a relatively long vacancy⁴²¹ for a Labour member of the Committee which was finally filled when Yasmin Qureshi (Labour MP for Bolton South East and a former Criminal Lawyer and Human Rights adviser to Ken Livingstone) replaced Soulsby on 12 July 2011. The delay in replacing members is matter for each political party. The House of Commons having decided in March 2010 to endorse the principle set out by the Wright Committee⁴²² that 'parties should elect members of select committees in a secret ballot by whichever transparent and democratic method they choose⁴²³ ...' with the outcome reported to and endorsed by the House'.⁴²⁴ It is unfortunate that this vacancy was open for months rather than weeks, but as the Committee on Reform of the House of Commons noted, it 'is not always easy to fill vacancies'.⁴²⁵

Such problems are, of course, not unique to this Committee (nor indeed to the 2010 Parliament)⁴²⁶ but they do unhelpfully detract from the cohesion of a Committee's work and more significantly from the accumulation of knowledge and expertise that a Committee gains through experience in the form of its members, individually and cumulatively. Tyrie has pointed to the longer terms served by many Committee members as helping to 'develop a committee memory and a sense of collegiality, modifying party tribalism'.⁴²⁷ Longevity of service is also likely to develop expertise and, with it, confidence. Informed questioning provides much of a challenge for the policy-makers and in itself contributes greatly to effective scrutiny. With the advent of fairly frequent reshuffles under successive governments (particularly at the lower echelons of Ministerial office as experienced by the PCRC) it is far from unknown for Committee Members to have significantly greater expertise and understanding than the Minister.

5.1.3. Cross-party Co-operation and Consensual Working

⁴²¹ From 1 April to 12 July 2011

⁴²² Reform Committee (HC 2008-09, 1117) (n3)

⁴²³ HC Deb 4 March 2010, vol 506, col 1095

⁴²⁴ Reform Committee (HC 2008-09, 1117) (n3) p83, recommendation 6

⁴²⁵ Reform Committee (HC 2008-09, 1117) (n2) 45

⁴²⁶ For example 'In session 2008/09 there were over 40 cases of members being removed and replaced, for a variety of reasons' Reform Committee (HC 2008-09, 1117) (n3) 45

⁴²⁷ Tyrie, 'Government by Explanation' (Institute for Government, April 2011) 11

At a fairly early stage, it appeared that the individual personalities making up the PCRC were a long way from the compliant back-benchers whom the whips would traditionally have attempted to nominate for Select Committee membership. Setting aside consideration of the Committee Chair for a moment, a few words on a number of other (early) members might help to draw a picture. Christopher Chope, for example, voted against the Government 13 times during the passage of the controversial *Parliamentary Voting System and Constituencies Bill*.⁴²⁸ Chope was the only original Committee Member, aside from the Chair, still on the Committee at the dissolution of Parliament in 2015.

As discussed above, in earlier chapters, whilst the spirit of Select Committee working should be primarily consensual and non-partisan unfortunately there are sometimes members (and occasionally entire committees) who operate in a more ‘party political’ manner than one would hope. On a preliminary investigation/reading of various PCRC members’ contributions to parliamentary debates and ‘sound bites’/press statements there is one member in particular who appeared to be utilising his role for ‘political’ purposes, namely Tristram Hunt, then the newly elected Labour MP for Stoke-on-Trent Central⁴²⁹. Hunt used his maiden Parliamentary speech,⁴³⁰ to attack the Coalition plans for Constitutional Reform as being ‘*ill-thought-out*’. Years later in Hunt’s resignation letter (stepping down at the 2017 General Election) he, however, expressed pride over the role he played to ‘scrutinise Government policy on the Constitutional Reform Select Committee’.⁴³¹

At the other end of the spectrum Eleanor Laing and Graham Allen, both experienced MPs, gave every impression to be working just as one would wish in a Select Committee – with Laing taking the Chair in the absence of Allen on occasion and also speaking to legislative amendments tabled by Allen in the House in his absence. Laing was discharged from the PCRC in October 2013 upon taking up a post as a Deputy Speaker of the House of Commons.

⁴²⁸ Philip Cowley and Mark Stuart, ‘10 Minutes to Midnight’ (17 February 2011) at www.revolts.co.uk

⁴²⁹ See for example, Tristram Hunt, ‘Florida, here we come: Clegg’s rush to reform constituency boundaries will disenfranchise many poor and minority voters’, *The Guardian* (20 July 2010)

⁴³⁰ HC Deb 7 June 2010, vol 511, cols 65-66

⁴³¹ Accessed via <<http://labourlist.org/2017/01/why-ive-resigned-tristram-hunts-letter-to-stoke-labour-members/>>

5.1.4. Minority Party Representation

The lack of positions on Select Committees for minority parties or independents is an issue across the board, certainly not confined to the PCRC. Members of the smaller parties have raised their concerns regarding the lack of representation for the independent and minority party members of the Commons in the House. Pete Wishart (Perth and North Perthshire) (SNP): 'There is now a Political and Constitutional Reform Committee. Constitutional reform is what our parties are about; it is our reason for being here, but there is no place on the Committee for the minority parties'.⁴³² To which the Chair replied:

The Wright Committee proposed that on every Committee of the House there be one reserve place for the Speaker to allocate-a Speaker's pick-so that justice could be done. That place might be for the minority parties or, indeed, those with minority opinions within larger parties. That proposal was not brought forward, but that was the doing of not the Wrightinistas, or whatever pejorative term the hon. Gentleman wishes to make up, but the Government and the Front Benchers of the day.⁴³³

The Wright Committee Report had suggested that 'Members in individual cases can be added to specific committees to accommodate the legitimate demands of the smaller parties'.⁴³⁴

⁴³² HC Deb 15 June 2010, vol 511, col 807

⁴³³ HC Deb 15 June 2010, vol 511, col 808

⁴³⁴ Reform Committee (HC 2008-09, 1117-I) (n3) 55

PART II – Case Studies

Chapter Four: Reviewing Constitutional Change – Process and Procedure

1. Introduction

Throughout its term the PCRC played a pivotal role in examining and reviewing constitutional processes and changes, along with making important recommendations for future improvements. This chapter - the first of several case studies - considers several individual inquiries which best illustrate the PCRC's distinctive work in this context. The PCRC's early work in this field was primarily reactive and in response to Government proposals or actions, for example, *Lessons from the Process of Government Formation after the 2010 General Election*,⁴³⁵ and the *Constitutional Implications of the Cabinet Manual*.⁴³⁶ As the Committee began to develop and mature, however, the nature of its work expanded in scope becoming predominately pro-active and purposeful; the nexus of Committee's work began to emerge via a series of linked inquiries and evidence sessions⁴³⁷ and culminated in a unique inquiry into the desirability, or otherwise, of codification of the British constitution and a consultation on a 'new Magna Carta'.

2. A Unique and Innovative Long-term view

The inquiries discussed in this chapter 'fit' within the Committee's long-term policy objectives, in that they perceptibly relate to its project around the potential for codification of the United Kingdom's famously uncoded Constitution. The PCRC commenced an Inquiry into 'Mapping the path to codifying - or not codifying - the UK's Constitution' on 16 September 2010. This project, which ran for the length of the Parliament, influenced many of the Committee's other inquiries. Further calls for evidence in the context of the PCRC's efforts around codification were issued with regularity throughout as the project developed and evolved.

⁴³⁵ PCRC, *Lessons from the Process of Government Formation after the 2010 General Election* (HC 2010-12, 528)

⁴³⁶ PCRC, *Constitutional Implications of the Cabinet Manual* (HC 2010-12, 734)

⁴³⁷ For example, in relation to Prerogative powers

In this context it is difficult to detach the subject matter and the approach adopted by the Committee from the personal interests of its Chair who had long held an interest in increasing the codification of the British constitution. As an individual, Allen made a number of moves to progress codification of the British constitution in its entirety or in part, for example, in 2007 with the introduction of a Private Member's Bill to 'provide for the drawing up of a written constitution'.⁴³⁸ It is usual to expect that the Chair, to a greater extent than other members,⁴³⁹ is likely to have influence over the work plan of a Committee. In circumstances in which a Chair has an extensive bank of experience and/or knowledge to draw upon this influence is likely to be heightened, as was the case with the PCRC; its agenda was, in part, a reflection of Allen's interests and concerns. This, however, does not diminish its considerable achievements but rather demonstrates a potential advantage of utilising and retaining the expertise of members in Committees.

The PCRC's long-term project into codification, in particular, should be viewed as a constructive piece of constitutional research which is the first of its kind in the context of Select Committees. Unique in terms of its longevity, expanse of subject matter and its use of, and partnership with, academic resource as research and specialist advice through the commissioning of specific research projects via the Centre for Political and Constitutional Studies at King's College London. This innovative project was funded by the Joseph Rowntree Charitable Trust and the Nuffield Foundation and resulted in the publication of a paper – as part of the Committee's evidence-gathering research – which described the 'existing UK Constitution'.⁴⁴⁰ In relation to this 'big picture' inquiry into codification, the Committee held a number of evidence sessions at an early stage in the Parliament. Two of these considered examples of major constitutional changes that had taken place, or were about to take place, in Ireland, Iceland, Hungary and New Zealand. A third evidence session was held several months later and included a panel of witnesses with experience in drafting constitutions for the UK, and an academic with extensive knowledge of the constitution in the UK and

⁴³⁸ *Constitutional Reform Bill* (2006-07, HC Bill 114)

⁴³⁹ Discussed below in chapter eight

⁴⁴⁰ Centre for Political & Constitutional Studies, King's College London, 'Codifying – or not codifying – the United Kingdom Constitution: The existing constitution' (May 2012); PCRC News Release, 'Views sought on "The Existing Constitution"' (11 May 2012)

European Union. The fourth evidence session, in January 2012, examined the historical context of the United Kingdom's constitution.⁴⁴¹

A number of smaller scale inquiries undertaken by the PCRC, linked with this overarching project, to a greater or lesser degree, and some are considered in this chapter where the focus is on the impact and working of the Committee in terms of reviewing constitutional change in the round. These intricately linked pieces of work include: an inquiry, launched in September 2013, examining the 'constitutional role of the judiciary if there were a codified constitution';⁴⁴² an examination of the constitutional implications of the Cabinet Manual;⁴⁴³ lessons to be learned from the post-2010 election process of Government formation;⁴⁴⁴ Parliament's Role in Conflict Decisions;⁴⁴⁵ and the Role and Powers of the Prime Minister.⁴⁴⁶ In relation to placing Prerogative powers on a statutory footing, the PCRC produced some interesting material on Parliament's role in relation to the use of the Prerogative war-making power by the Executive. This example, also illustrates that there are other overlaps in purpose as this work could also be perceived as an attempt to complete the unfinished business of previous Committees and previous Parliaments.

Codification lies also at the heart of the PCRC inquiry on the Role and Powers of the Prime Minister. Consider the background from Allen's perspective; in 2001 he introduced a Ten Minute Rule Bill on the Role of the Prime Minister.⁴⁴⁷ He stated in the House at the time that his 'unambitious Bill' was designed 'merely to consolidate in one statute all the prime

⁴⁴¹ PCRC, *Mapping the path to codifying – or not codifying – the UK's constitution – oral evidence* (HC 2010-12, 1178 i-iv); Oral evidence sessions on 7 and 14 July 2011, 8 December 2011 and 12 January 2012

⁴⁴² PCRC, *Constitutional role of the judiciary if there was a codified constitution* (HC 2012-13, 802)

⁴⁴³ PCRC, *Constitutional Implications of the Cabinet Manual* (HC 2010-12, 734)

⁴⁴⁴ PCRC, *Lessons from the process of Government formation after the 2010 General Election* (HC 2010-12, 528)

⁴⁴⁵ PCRC, *Parliament's role in conflict decisions* (HC 2010-12, 923); Political and Constitutional Reform Committee, *Parliament's role in conflict decisions: Government Response to the Committee's Eighth Report of Session 2010-12* (HC 2010-12, 1477); Political and Constitutional Reform Committee, *Parliament's role in conflict decisions – further Government Response: Government Response to the Committee's Ninth Report of Session 2010-12* (HC 2010-12, 1673); Political and Constitutional Reform Committee, *Parliament's role in conflict decisions: an update* (HC 2013-14, 649)

⁴⁴⁶ Political and Constitutional Reform Committee, *Role and powers of the Prime Minister* (HC 2014-15, 351); and closely related to this is another inquiry - PCRC, *The impact and effectiveness of ministerial reshuffles* (HC 2013-14, 255)

⁴⁴⁷ HC Deb 28 November 2001 vol 375 cols 1008-12; *Prime Minister (Office, Role and Functions) Bill* HC Bill 60 53/1; Note also the PCRC Inquiry into the role and powers of the Prime Minister (HC 2014-15, 351)

ministerial, powers that already exist' albeit with 'one *modest* innovation' which was 'to suggest that Parliament takes its part in the process of choosing our Prime Minister'.⁴⁴⁸ In debate, Wright described it as a 'subversive Bill...the real intention...to engineer nothing less than a constitutional revolution'⁴⁴⁹ He suggested that the Bill 'does not have the courage to propose a written constitution, which is the inevitable end of the process'.⁴⁵⁰ In the longer term,⁴⁵¹the Committee's work may prove to have been the impetus for codification or the partial codification of aspects of constitutional behaviour and power (at least in areas which are likely to meet with a relatively wide consensus).⁴⁵²

⁴⁴⁸ HC Deb 28 November 2001, vol 375, cols 1009 [emphasis added]

⁴⁴⁹ HC Deb 28 November 2001, vol 375, cols 1010

⁴⁵⁰ HC Deb 28 November 2001, vol 375, cols 1012

⁴⁵¹ Particularly in the context of recent constitutional challenges

⁴⁵² Discussed further in chapter nine

A. Lessons from the Process of Government Formation after the 2010 General Election⁴⁵³

Following the unusual situation ‘of considerable political and historical significance’⁴⁵⁴ brought about by the formation of a Coalition Government after the General Election in May 2010 the PCRC produced a Report in which it suggested a number of ‘practical improvements’ which could be made to the process of Government formation and transition. It also identified a lack of clarity about the constitutional conventions governing this area. This particular inquiry, which concluded with the new Committee’s Fourth Report to ‘identify the lessons from the process of government formation and transition that followed the general election in May 2010’, was the first in which the Committee’s work was not subject to extremely tight time constraints (unlike its earlier work on the *Fixed-term Parliaments Bill* and the *Parliamentary Voting System and Constituencies Bill*, which had to be completed in haste, as to the legislative process had already commenced).⁴⁵⁵ This example thus begins to provide a sense of the Committee’s emerging working style and methods; in seeking to suggest improvements to processes, as and when they may occur in the future, the early stages of what would become the hallmark of the Committee’s work can be observed. The genesis of the constructive, evidence-led nature of the Committee’s approach was already emerging as it sought to engage with policy-makers to help bring about long-term improvements by investigating and promoting informed debate in the field of constitutional and political reform.

1. The Role and Influence of the PCRC

This inquiry looked at the negotiations and politicking of those ‘five days in May’ and took evidence from key participants in the process from each of the (then) three main political parties. This was also the first PCRC Report which dealt not with scrutiny of legislation⁴⁵⁶ but as a result of the Committee acting on its own initiative. It was an ambitious and wide-ranging

⁴⁵³ PCRC, *Lessons from the process of Government formation after the 2010 General Election*, Fourth Report of Session 2010-12 HC 528

⁴⁵⁴ *ibid* 1, citing Blackburn, Ev w2

⁴⁵⁵ Discussed below in chapter six

⁴⁵⁶ As the Committee’s first, second and third reports had been

inquiry looking comprehensively at the process of Government formation – something which had not recently been considered by a Select Committee in the round, either in terms of specific practical concerns or the broader constitutional issues. Through taking evidence from and holding discussions with a range of experts, interested parties and the key actors in the process – ranging from academics to politicians who were directly involved in the post-election negotiations⁴⁵⁷ and senior members of the civil service, including the Cabinet Secretary – the Committee's Inquiry provided a useful research base for future work.⁴⁵⁸ This was closely aligned to the Committee's work around the Cabinet Manual and the Role and Powers of the Prime Minister⁴⁵⁹ and the correlation between them is clearly referenced in the Government Response to the PCRC's Report. It acknowledges that the PCRC has made 'four recommendations in relation to the text in the Cabinet Manual' but explains that it will respond to those points 'in detail' and to the 'recommendations in relation to the role and powers of the Prime Minister' following the Committee's respective inquiries into these matters.⁴⁶⁰

As a cross-party Parliamentary Committee the PCRC did not have a vested interest in the matter, at least not in the manner of individual political parties (or indeed the Executive). The Committee's inquiry thus made a particularly useful contribution to the evaluation of the pre-emptive work carried out by the Cabinet Office in advance of the 2010 General Election.⁴⁶¹ A covering letter from the Cabinet Secretary⁴⁶² to the Committee referred to its Report as both 'thoughtful and helpful'.⁴⁶³ During the evidence taking process it became apparent to the Committee, as it had to observers at the time of the election, that there was a lack of consensus and/or understanding about the position of an incumbent PM immediately after a General Election. This confusion was obviously heightened in the circumstances of May 2010 – which were such as to spawn two books – Rob Wilson's 'Five Days to Power – The Journey

⁴⁵⁷ From each of the negotiating teams: Rt Hon Oliver Letwin MP (Conservative), Rt Hon David Laws MP (Liberal Democrat), Lord Adonis (Labour)

⁴⁵⁸ And thus coincides with the categorisation of the inquiries discussed below in chapter five

⁴⁵⁹ Discussed later in this chapter

⁴⁶⁰ PCRC, *Lessons from the process of government formation after the 2010 general election: Government Response to the Committee's Fourth Report of Session 2010–11*, (HC 2010-12, 866) 2

⁴⁶¹ Particularly the Draft Cabinet Manual Chapter on what to do in the event of a Hung Parliament

⁴⁶² Then Gus O'Donnell who gave oral evidence to the Committee on 10 March 2011

⁴⁶³ PCRC, *Lessons from the process of government formation after the 2010 general election: Government Response to the Committee's Fourth Report of Session 2010–11*, (HC 2010-12, 866) Appendix

to Coalition Britain' and David Laws' '22 Days in May' – both written by participants in the negotiation process.⁴⁶⁴ This led the Committee to recommend that:

There needs to be clear and well-understood guidance about when an incumbent Prime Minister should resign and when he has a duty to remain in office...Reaction to the events of May 2010 suggests that more detailed guidance was needed then. Reaction to the revised text in the December 2010 Cabinet Manual suggests that it may not go far enough'.⁴⁶⁵

The PCRC's Report concluded that whilst the Cabinet Manual provided 'greater clarity on the extent to which an incumbent government has a right to stay in office to see whether it can command the confidence of the House of Commons' this was potentially muddled by 'the inclusion of the comments made in May 2010 by the Leader of the Liberal Democrat party may suggest that this view will carry weight in future'.⁴⁶⁶ In due course this content, which had potential to mislead readers as to the relevant constitutional convention, was omitted from the final version of the Cabinet Manual and as such formed a tangible achievement for the PCRC.

Several other recommendations, as noted above, were to be further discussed in relation to the Cabinet Manual and the inquiry into the Role and Powers of the Prime Minister thus from the Government's initial response, received in March 2011, it was difficult to gauge whether or not they had tangible and immediate influence.⁴⁶⁷ One exception was the clear acceptance and support of a PCRC suggestion in relation to the role of the civil service; the Report had recommended that 'civil service guidance should be drawn up and published on facilitating consultation between political parties during periods in which restrictions on government

⁴⁶⁴ Both published by Biteback Publishing on 15 November 2010

⁴⁶⁵ PCRC, *Lessons from the Process of Government Formation after the 2010 General Election* (HC 2010-12, 528) 27

⁴⁶⁶ *ibid* 15

⁴⁶⁷ PCRC, *Lessons from the process of government formation after the 2010 general election: Government Response to the Committee's Fourth Report of Session 2010–11* (HC 2010-12, 866)

activity apply'.⁴⁶⁸The Government agreed and made a commitment to publish updated guidance 'in advance of the next General Election'.⁴⁶⁹

Other practical considerations to improve the process were suggested by the Committee, for example, in relation to decisions which an incumbent Government has to take during a period where restrictions on Government activity apply, that is during 'purdah' or the 'pre-election period'.⁴⁷⁰The PCRC recommended that in such instances, 'the duty to consult Opposition parties is more than a matter of courtesy'⁴⁷¹and welcomed the revised wording in the Cabinet Manual. In summary, of the fourteen 'recommendations'⁴⁷²in the Committee's Report the Government 'agreed' with three and 'noted' the remainder.

2. Impact on Broader Constitutional Framework

Evidence received by the Committee⁴⁷³led it to conclude that a longer period of time, than the mere five days in 2010, would be beneficial, in terms of the procedure for forming a government, as would a break (over a weekend) between an exhausting election and the commencement of negotiations. The Committee examined the 'constitutional status' of the Coalition Agreement,⁴⁷⁴where the primary issue in contention was the legitimacy (or otherwise) of the Programme for Government as a Coalition Government formed *post-election*, by its very nature, does not possess a clear mandate for constitutional reform (at least not in the way that a majority party could argue it did). The status of a Coalition Agreement must therefore be distinguished from that of an Election Manifesto.

⁴⁶⁸ PCRC, *Lessons from the Process of Government Formation after the 2010 General Election* (HC 2010-12, 528) 81

⁴⁶⁹ PCRC, *Lessons from the process of government formation after the 2010 general election: Government Response to the Committee's Fourth Report of Session 2010–11*, (HC 2010-12, 866) 30

⁴⁷⁰ For a good summary of Purdah see House of Commons Library SN/PC/05262, *Purdah, or the pre-election period* (4 January 2010)

⁴⁷¹ PCRC, *Lessons from the Process of Government Formation after the 2010 General Election* (HC 2010-12, 528) 76

⁴⁷² The majority were comment rather than call for action

⁴⁷³ Particularly that of Lord Adonis – a participant (on behalf of the Labour Party) in the negotiations and Director at the Institute for Government (from July 2010 to January 2012)

⁴⁷⁴ HMG, *The Coalition: Our Programme for Government* (20 May 2010)

B. Constitutional Implications of the Cabinet Manual⁴⁷⁵

The publication of the draft Cabinet Manual⁴⁷⁶ was fortuitous in its timing as it enabled the PCRC to combine its ambitious work on matters around codification with the more customary Committee function of scrutinising Government, at an early stage – mere months – after the Committee came into being. This inquiry also provided a platform for the Committee to establish a prominent role for itself in the field of constitutional reform and to achieve some significant ‘quick wins’.

It was undoubtedly beneficial that the Committee’s Chair had a wealth of knowledge in this area.⁴⁷⁷ Several months later, Allen, writing an article as Chair of the PCRC, reminded readers of the ‘origins’ of the Manual;⁴⁷⁸ the project as embarked upon by the former PM, Gordon Brown, was intended to be a step towards a written constitution.⁴⁷⁹ Whilst accepting that, albeit the closest thing [to a codified constitution] that we have in the UK, the Cabinet Manual does *not* purport to be a written constitution,⁴⁸⁰ Allen took this as an opportunity to suggest that it could be a useful starting point for such a project. He also put forward the possibility of holding a ‘wide-ranging, inclusive process whereby the people of the United Kingdom collectively decided what their constitution would be, and expressed it in written form’. This foreshadowed the later PCRC inquiry into whether or not a constitutional convention ought to be appointed in the UK, launched in April 2012.⁴⁸¹ The detailed work undertaken by the Committee in its inquiries around the draft Manual is evidence in support of the value which can be added, both to the debate on a subject and to the substantive policy, by a Committee with some level of expertise.

⁴⁷⁵ PCRC, *Constitutional Implications of the Cabinet Manual Vols I & II* (HC 2010-12, 734)

⁴⁷⁶ Throughout this chapter the terms ‘draft Cabinet Manual’ or ‘draft Manual’ will be used to refer to the draft document of December 2010. The ‘Cabinet Manual’ will be used to refer to the later final version.

⁴⁷⁷ Note Allen’s support for a written constitution in the UK discussed above

⁴⁷⁸ Graham Allen MP, ‘The Cabinet Manual: First Step To A Written Constitution?’ eGov monitor (2 November 2011): accessed via <www.egovmonitor.com>

⁴⁷⁹ Gordon Brown, ‘Towards a new politics’, Speech to Institute for Public Policy Research (2 February 2010); Cabinet Manual initiative announced by Gordon Brown at an IPPR event as part of broader reform which could lead to written constitution – ‘I can announce today that I have asked the Cabinet Secretary to lead work to consolidate the existing unwritten, piecemeal conventions that govern much of the way central government operates under our existing constitution into a single written document’: accessed via <<http://www.ippr.org/events/54/6301/the-new-politics-with-gordon-brown>>

⁴⁸⁰ A point frequently iterated in evidence to the PCRC Inquiry and in the Government Response

⁴⁸¹ PCRC, *Do we need a constitutional convention for the UK?* (HC 2012-13, 371)

1. The Role and Influence of the PCRC

The draft Cabinet Manual featured specifically in the recommendations made by the Committee in three Reports of its first session;⁴⁸² a clear indication of the draft Manual's potential significance and the breadth of subject matter contained within. The reference made by the Committee (in its Report on the draft Cabinet Manual) to the possible creation of a new constitutional convention regarding Parliament's role in relation to the deployment of the armed forces in conflicts, directly links the research and examination of the Cabinet Manual with the Committee's other work, here, in terms of inquiring into Parliament's Role in Conflict Decisions, discussed below.⁴⁸³ Thus several fairly coherent threads begin to appear in the Committee's work.

In general terms, the PCRC's Reports welcomed the draft Manual regarding it as a 'highly significant document'.⁴⁸⁴ The Committee emphasised that all of the Executive's work – including amongst this the (Executive-created) Cabinet Manual – is subject to Parliamentary, and therefore to Select Committee, scrutiny. This scrutiny, on the part of the PCRC, took the form of practical suggestions for specific improvements to the text and was not intended to replace the simultaneous public consultation (on the draft Manual)⁴⁸⁵ but rather to 'consider the status of the Manual and the implications it might have for the United Kingdom's uncodified constitution'.⁴⁸⁶ The PCRC did not consider the twelve-week consultation period to be sufficient 'given the constitutional and political importance of the matters described in the Manual'.⁴⁸⁷ This view was shared by a number of witnesses during its inquiry, however, despite the limited time frame for consultation, 52 responses were received by the Government.

⁴⁸² See discussion below re war powers and above re 'lessons learned'

⁴⁸³ See discussion below and the eighth, ninth and twelfth Reports of the PCRC: PCRC, *Parliament's role in conflict decisions* (HC 2010–12, 923); PCRC, *Parliament's role in conflict decisions: Government Response to the Committee's Eighth Report of Session 2010-12* (HC 2010-12, 1477); PCRC, *Parliament's role in conflict decisions – further Government Response: Government Response to the Committee's Ninth Report of Session 2010-12* (HC 2010-12, 1673)

⁴⁸⁴ PCRC, *Constitutional Implications of the Cabinet Manual* (HC 2010-12, 734) 1

⁴⁸⁵ Which ended on 8 March 2011

⁴⁸⁶ PCRC, *Constitutional Implications of the Cabinet Manual* (HC 2010-12, 734) 3

⁴⁸⁷ PCRC, *Constitutional Implications of the Cabinet Manual* (HC 2010-12, 734) 86

During its inquiry the Committee took evidence from two panels of academic experts, the Cabinet Secretary and, as part of a discussion session on wide range of constitutional matters,⁴⁸⁸ also heard from Professor Margaret Wilson, the former Speaker of the New Zealand House of Representatives.⁴⁸⁹ The New Zealand experience being of particular interest and relevance owing to the similarity between the UK's draft Manual and the, relatively recently published, New Zealand Cabinet Manual.⁴⁹⁰

1.1. The Reception of the PCRC Report

The Committee's Report was referred to in the media. The 'measured' approach adopted by the PCRC was noted and, helpfully, contrasted with the more extreme views of others mentioned – the PCRC Report was said to welcome 'the motivation behind the Cabinet Manual project' as a desire for greater transparency in the operation of Government.⁴⁹¹

The Government responded jointly to the recommendations made by the PCRC, the PASC and the Constitution Committee in a response published simultaneously with the 'final' version of the Cabinet Manual in October 2011.⁴⁹² A brief interim response⁴⁹³ had been provided by Government to the Constitution Committee and the PASC;⁴⁹⁴ this was copied to the PCRC who were 'content to await the final publication of the Cabinet Manual before receiving a Government response'.⁴⁹⁵ The final Government response was detailed and dealt in turn with each of the Committees' recommendations. As discussed below, the Government accepted the majority of the Select Committees' recommendations and has openly and clearly acknowledged the contribution which they made to the redrafting of the Manual – explicitly

⁴⁸⁸ PCRC, *Constitutional Lessons from New Zealand* oral evidence - 20 January 2011 (HC 2010-12, 747-i)

⁴⁸⁹ And prior to that, the New Zealand Attorney-General

⁴⁹⁰ According to Prof Wilson, Q1, the NZ Cabinet Manual began in 1948 and developed in content and circulation culminating with the on-line publication in 1998.

⁴⁹¹ Jane Dudman, 'MPs urge caution over Cabinet Manual's interpretation' *The Guardian* (29 March 2011)

⁴⁹² HMG, *Government Response to the House of Lords Constitution Committee, Political and Constitutional Reform Committee and Public Administration Select Committee on the Cabinet Manual Committee Reports of Session 2010-12*, October 2011 (Cm 8215)

⁴⁹³ Letter from Gus O'Donnell to Baroness Jay, Chair of the Constitution Committee, and accompanying *Cabinet Manual House of Lords Constitution Committee report – Interim response* (27 May 2011)

⁴⁹⁴ PASC, *Cabinet Manual: Government Interim Response to the Committee's Eighth Report of Session 2010-12* (HC 2010-12, 1127)

⁴⁹⁵ HMG, *Government Response to the House of Lords Constitution Committee, Political and Constitutional Reform Committee and Public Administration Select Committee on the Cabinet Manual Committee Reports of Session 2010-12*, October 2011 (Cm 8215) 5

stating that the Select Committee Reports had ‘assisted in the finalisation of the Cabinet Manual’.⁴⁹⁶

1.2. Overlaps with Other Select Committees’ Work

As with other early PCRC inquiries, and, as is acutely evident in this instance through the Government’s joint Response to three separate Select Committees, the Cabinet Manual was also the subject of scrutiny for other Parliamentary Committees. The approach or rather the focus of the inquiries undertaken by each of these three Committees differed somewhat. The PASC explained that the focus of its Report was ‘primarily on how this document [the Cabinet Manual] can improve our standards of public administration and help meet the Cabinet Office’s strap line of ‘Making Government work better’’.⁴⁹⁷ The Constitution Committee published a Report on the draft Cabinet Manual – ‘intended to inform Members of the House about the issues which arise from the Manual’s publication’⁴⁹⁸ – having been invited by the Cabinet Secretary to comment.⁴⁹⁹ In this the purpose of the Constitution Committee’s Report bore similarities to that of the PCRC.

In relation to scrutiny of the draft Cabinet Manual, whilst the Parliamentary Committees differed in the approach taken to their respective scrutiny of the draft manual, and had, ostensibly, distinct purposes, there remained a significant amount of coincidence. This was most obvious in terms of the evidence sessions held by the various Committees and the overlap of witnesses, as noted below. It is of course entirely understandable that the Committees would seek to draw upon the knowledge of those whom are expert and experienced in the sphere into which they are inquiring; it is also likely that the number of key individuals with whom one ought to discuss the topic and take evidence from will be limited. Correspondingly it is sensible that the Committees inquiring into the same subject are likely to want to hold evidence sessions and discussions with the same individuals. It is, however, less sensible (and certainly less time-effective for those involved) that to do so

⁴⁹⁶ *ibid* 4 (introduction)

⁴⁹⁷ PASC, *Cabinet Manual* (HC 2010-12, 900) 4

⁴⁹⁸ *ibid* 6

⁴⁹⁹ Constitution Committee, *The Cabinet Manual* (HL 2010-12, 107)

results in a number of almost duplicate meetings being held. This scenario provided an example of a lost opportunity for joint evidence sessions to be held by Parliamentary Select Committees undertaking similar inquiries into the same subject matter. Although such joint working between committees occurs infrequently,⁵⁰⁰ it certainly is a viable option open to the Committees. Recently some pre-appointment hearings have been held as joint sessions.⁵⁰¹ Select Committees (in both Houses) can (and from time to time do) meet together to take evidence and to deliberate - a sensible option for inquiries, such as this one into the Cabinet Manual, where there is significant overlap of subject matter and actual witnesses. The PCRC did not hold any joint sessions during the 2010 Parliament.

In terms of identifying specific duplication an overview of the witnesses from whom evidence was taken demonstrates with clarity where joint sessions could, and I suggest, should have been held. The PASC's inquiry involved taking evidence from three former Cabinet Secretaries⁵⁰² and holding a seminar with a number of academics and civil servants, three of whom also gave oral evidence to the PCRC⁵⁰³ and a further two provided written evidence to the PCRC.⁵⁰⁴ Lord Hennessy also gave oral evidence to the Lords Constitution Committee, as did the former Cabinet Secretaries who had given evidence to the PASC,⁵⁰⁵ and additionally Lord Butler of Brockwell.⁵⁰⁶ The PCRC took evidence from the (then) Cabinet Secretary, Gus O'Donnell.⁵⁰⁷ Through an inquiry into a document 'written by the Executive, for the

⁵⁰⁰ Extract from Maer et al, 'Select Committees under Scrutiny' (2004): 'Select Committees also have the power to work with one another. Select committees and sub-committees can hold concurrent meetings with one or more other Commons select or subcommittees, and any committee of the House of Lords. In practice, however joint meeting and working of committees is rare.' [One notable success has been the "Quadripartite Committee": the Defence, Foreign Affairs, International Development and Trade and Industry Committees have co-operated on a continuing basis since 1997 to examine and report on the government's new series of annual reports on strategic export controls. Generally, however, the caveats regarding sub-committees also apply to joint working.]

⁵⁰¹ For example, in May 2011, a pre-appointment hearing for the Government's preferred candidate for Chairman of the Welsh Broadcaster, S4C, was held as a Joint Session involving both the Welsh Affairs Committee and the Culture, Media and Sport Committee. Also in March 2012, the Welsh Affairs Select Committee and the Enterprise and Business Committee of the National Assembly for Wales jointly took evidence on international connectivity through Welsh ports and airports (the session was held in Wales).

⁵⁰² Lord Armstrong of Ilminster, Cabinet Secretary 1979–1988; Lord Wilson of Dinton, Cabinet Secretary 1998–2002; and Lord Turnbull, Cabinet Secretary 2002–2005

⁵⁰³ Professor Robert Hazell, UCL; Lord Hennessy of Nympsfield, QMUL; and Professor Iain Maclean

⁵⁰⁴ Professor Vernon Bogdanor, KCL; and the Institute of Government

⁵⁰⁵ Lord Armstrong of Ilminster, Lord Wilson of Dinton and Lord Turnbull

⁵⁰⁶ Cabinet Secretary 1988–1998

⁵⁰⁷ Cabinet Secretary 2005–2011

Executive'⁵⁰⁸ in which the Cabinet Secretary, as Head of the civil service, performs a uniquely pivotal role, questioning and hearing from those who have held that position at various times is indeed critical for a Committee to develop a solid understanding and evidence base upon to draft a Report *but* it appears imprudent to have similar sessions essentially repeated before different Committees. Similarly, Professor Margaret Wilson informally discussed her experience of the New Zealand Cabinet Manual with the Lords Committee on 12 January 2011 and nine days later she also gave evidence to the PCRC⁵⁰⁹ under the session heading 'Constitutional lessons from New Zealand'.⁵¹⁰

Did this overlap and duplication translate into similar outcomes? Interestingly, it appears not, despite such overlap, some of the Select Committees' recommendations are indeed similar but not, by any means, all.

The PCRC explained that its view on the status of the manual was more 'equivocal' than, for example, that of the Constitution Committee, and this became evident when considering the differing views of the Committees in terms of the role which they envisage for Parliament to play in relation to the Cabinet Manual. In this respect the Constitution Committee's view was particularly strident – it was 'strongly opposed to any suggestion that the Cabinet Manual be formally approved by Parliament or by any of its Committees'.⁵¹¹ The Government Response acknowledged 'that the Select Committees have different views on the role that Parliament should play in relation to the Cabinet Manual'⁵¹² although ultimately all Committees were agreed that, so long as the Cabinet Manual is effectively a guidance document for ministers and civil servants it would not be appropriate for Parliament to 'seek to endorse'⁵¹³ or 'to decide upon its content' as to do so 'would give it a status it should not have'.⁵¹⁴ In this regard

⁵⁰⁸ HMG, *Government Response to the House of Lords Constitution Committee, Political and Constitutional Reform Committee and Public Administration Select Committee on the Cabinet Manual Committee Reports of Session 2010-12*, October 2011 (Cm 8215) 5 (overview)

⁵⁰⁹ On 20 January 2011

⁵¹⁰ PCRC, *Constitutional Lessons from New Zealand* oral evidence - 20 January 2011 (HC 2010-12, 747-i)

⁵¹¹ Constitution Committee, *The Cabinet Manual* (HL 2010-12, 107) 40

⁵¹² HMG, *Government Response to the House of Lords Constitution Committee, Political and Constitutional Reform Committee and Public Administration Select Committee on the Cabinet Manual Committee Reports of Session 2010-12* (Cm 8215, 2011) p21

⁵¹³ PASC, *Cabinet Manual* (HC 2010-12, 900) 54

⁵¹⁴ PCRC, *Constitutional Implications of the Cabinet Manual* (HC 2010-12, 734) 40

the PCRC suggested that [W]hether or not the Cabinet Manual should be open to amendment and decision by Parliament depends in our view on what the Cabinet Manual is or might become',⁵¹⁵ voicing the opinion that if remains a document entirely for the Executive then it would not be appropriate for Parliament to decide on its content.⁵¹⁶ If however, it was to become 'the basis for a shared understanding beyond the Executive of important parts of the United Kingdom's previously uncodified constitution. Parliamentary intervention would be entirely appropriate'.⁵¹⁷

The Government's view was that Parliament should not endorse the Cabinet Manual nor decide upon its content,⁵¹⁸ a response which was a closer reflection of the recommendations of the Constitution Committee, which was, 'strongly opposed to any suggestion that the Cabinet Manual be formally approved by Parliament or by any of its Committees',⁵¹⁹ than the suggestions proffered by the PCRC. The basis for the Government's response on this matter was grounded in its notion of the function and status of the Cabinet Manual as a document [written by the Executive] primarily for Ministers and the Civil Servants that advise them and that, 'whilst the Committees' comments on the draft have been valuable in developing the text'⁵²⁰ and 'Parliament's engagement...has been valuable in developing the revised text', it would not be appropriate for Parliament to approve such a document. The PCRC additionally recommended that an annual debate (during Government time)⁵²¹ should be held on the Cabinet Manual as a whole and on any changes made to it. Further, the Committee suggested that the Government should publish a list of changes made to the Manual during the preceding year to inform this debate.⁵²² Set within this background, the Government explained that it considered it a 'matter for the Backbench Business Committee to consider

⁵¹⁵ PCRC, *Constitutional Implications of the Cabinet Manual* (HC 2010-12, 734) 40

⁵¹⁶ This would reflect the practice in NZ – see Prof Wilson's evidence, Q28-9 – where the Cabinet Manual is viewed as a 'document dealing with the activities of the Executive' and a 'practice annual' which is approved by Cabinet but not by Parliament, as in Wilson's words: 'That would give it a status beyond which it has...'

⁵¹⁷ PCRC, *Constitutional Implications of the Cabinet Manual* (HC 2010-12, 734) 41

⁵¹⁸ HMG, *Government Response to the House of Lords Constitution Committee, Political and Constitutional Reform Committee and Public Administration Select Committee on the Cabinet Manual Committee Reports of Session 2010-12*, October 2011 (Cm 8215) p21

⁵¹⁹ Constitution Committee, *The Cabinet Manual* (HL 2010-12, 107) 40

⁵²⁰ HMG, *Government Response to the House of Lords Constitution Committee, Political and Constitutional Reform Committee and Public Administration Select Committee on the Cabinet Manual Committee Reports of Session 2010-12*, October 2011 (Cm 8215) p11

⁵²¹ Or a debate at least twice in a five-year Parliament

⁵²² PCRC, *Constitutional Implications of the Cabinet Manual* (HC 2010-12, 734) 42

whether Parliament wishes to schedule a debate on the Cabinet Manual' as it had no intention of scheduling such a debate in Government time.⁵²³

1.3. Impact & Influence

As is ever the case, where a number of factors are involved, it is especially challenging to attempt to distinguish the tangible impact and influence of the PCRC from that of other influences on the drafting of the Cabinet Manual, not least the influence of the other Select Committees. That said, however, in the revised final version of the Cabinet Manual,⁵²⁴ published on 24 October 2011, a number of the Committee's key recommendations were reflected and thus the Committee's work can legitimately be understood to have had a successful effect and impact on the outcome, that is on the content of the final Cabinet Manual. The Committee referred to its success in '[S]ecuring changes to the Cabinet Manual before its publication, including a section on Parliament's role in war-making' as a highlight of the 2010-12 parliamentary session.⁵²⁵

2. Constitutional Conventions - Forming a Government following a General Election

It became apparent through the PCRC's inquiry that many of the issues and questions surrounding the draft Cabinet Manual, in relation to its substantive content rather than the role that the document would, or should, play, related to constitutional conventions. The extent to which such conventions perform a critical function in the political system and governmental structure within the uncodified British constitution ensures that if the draft Cabinet Manual were to be comprehensive it would need to include reference to a number of relevant conventions. Constitutional conventions by their very nature are difficult to definitively define, and as the Committee suggested the 'draft [Cabinet Manual] may... be misleading in some places...as a result of an understandable desire for a degree of clarity that

⁵²³ HMG, *Government Response to the House of Lords Constitution Committee, Political and Constitutional Reform Committee and Public Administration Select Committee on the Cabinet Manual Committee Reports of Session 2010-12*, October 2011 (Cm 8215) p22

⁵²⁴ HMG, *Draft Cabinet Manual* (14 December 2010)

⁵²⁵ Liaison Committee, *Select committee effectiveness, resources and powers* (HC 2012-13, 697-II) Ev w40, 1

does not exist'.⁵²⁶ The Committee can claim a degree of success in the Government's acceptance of its recommendation that where 'there is the potential for disagreement or uncertainty... on the meaning of unwritten constitutional conventions' this should be noted in the Cabinet Manual.⁵²⁷ The Government response noted that where different views are 'expressed in relation to a convention, the Cabinet Manual makes this clear or states the Executive's own understanding of the position'.

The importance of Government's acceptance of this particular recommendation, and its clear acknowledgment of the potential problems resulting from a misunderstood constitutional convention was demonstrated through the controversy over the footnote, included in the initial draft, which erroneously stated the position of who would have 'the first right to seek to govern' in the event of a hung Parliament.⁵²⁸ The text of this controversial footnote in the draft Manual was as follows: 'In 2010, the Leader of the Liberal Democrat Party expressed a view that 'whichever party has won the most votes and the most seats, if not an absolute majority, has the first right to seek to govern, either on its own or by reaching out to other parties'.⁵²⁹ The PCRC explained, drawing upon evidence taken during its inquiry, that there was 'widespread agreement that the footnote...represents a political negotiating position adopted in 2010 rather than a statement of an existing constitutional convention or practice'⁵³⁰ and consequently called for it to be deleted from the Cabinet Manual. The Government Response professed that this note was included to provide context following the 2010 General Election; it was, however, conspicuously absent from the final version of the Manual published in October 2011. This represents a substantial and tangible success for the Committee – with its recommendation, at the very least contributing heavily and, at best directly, leading to this footnote having been entirely removed from the final version.⁵³¹ The Committee's influence in this regard can be attributed also to its earlier Report, of January

⁵²⁶ PCRC, *Constitutional Implications of the Cabinet Manual* (HC 2010-12, 734) 68

⁵²⁷ *ibid* 22

⁵²⁸ HMG, *The Cabinet Manual – Draft: A guide to laws, conventions, and rules on the operation of government* (December 2010) footnote 8, para 49

⁵²⁹ *ibid*

⁵³⁰ PCRC, *Constitutional Implications of the Cabinet Manual* (HC 2010-12, 734) 79

⁵³¹ HMG, *The Cabinet Manual: A guide to laws, conventions and rules on the operation of government* (1st edition, October 2011)

2011.⁵³² As discussed above, this earlier inquiry was launched ‘in order to identify the lessons from the process of government formation and transition that followed the general election in May 2010’.⁵³³ The Committee’s Report contained several comments and recommendations in relation to the Cabinet Manual in the context of ‘the issue of government formation.’⁵³⁴ For example, concerns had been raised regarding the inclusion of the footnote:

‘The December 2010 Cabinet Manual provided greater clarity on the extent to which an incumbent government has a right to stay in office to see whether it can command the confidence of the House of Commons. However, the inclusion of the comments made in May 2010 by the Leader of the Liberal Democrat party may suggest that this view will carry weight in future’.⁵³⁵

To which the Government Response explained that the note set out the negotiating position of the Liberal Democrat party which was relevant in the context of the 2010 election.⁵³⁶ It clarified then, as later, that it was ‘included for information’ and was ‘not a constitutional obligation or binding on political parties in the future’.⁵³⁷ A commitment was made at this point to ‘consider’ whether an amendment would be made once all responses on the draft Manual had been received.⁵³⁸

An interrelated matter, that of who should hold the position of PM in the event of a Hung Parliament (when it is unclear who else might be best placed to lead an alternative government), is another area in which the PCRC had a tangible impact. The explanation contained within the draft Manual, of the position of the incumbent PM, was challenged as being constitutionally inaccurate in evidence received by the PCRC. It was apparent that this

⁵³² PCRC, *Lessons from the process of Government formation after the 2010 General Election* (HC 2010-12, 528, Vols I-II)

⁵³³ *ibid* 1

⁵³⁴ *ibid* 5

⁵³⁵ *ibid* 15

⁵³⁶ As repeated in its later response

⁵³⁷ PCRC, *Lessons from the process of government formation after the 2010 general election: Government Response to the Committee’s Fourth Report of Session 2010–11*, (HC 2010-12, 866) 8

⁵³⁸ In the follow-up inquiry the conclusions drawn here were supported by evidence given to the PCRC by Robert Hazell who commented that ‘in the consultation and the subsequent revisions the drafters of the Cabinet Manual did their very best, when there was some disagreement or uncertainty, to make that clear’ - See PCRC, *Revisiting the Cabinet Manual* (HC 2014-15, 233) 9

was another field of uncertainty and thus the PCRC recommended that where 'there is a continuing dispute over the extent to which a Prime Minister has a duty to remain in office when it is unclear who else might be best placed to lead an alternative government. The Cabinet Manual needs to give clarity to the extent of this uncertainty, rather than to attempt to resolve the argument.'⁵³⁹

The Government subsequently amended the text relating to the position of the Prime Minister 'following careful consideration of the recommendations of all three Select Committee reports'.⁵⁴⁰ In the final version the recommendation had been adopted, and the position was explained stated as follows: '...it remains a matter for the Prime Minister...to judge the appropriate time at which to resign...'.⁵⁴¹

One final aspect, in relation to constitutional conventions, and an area of huge contemporary relevance, was in relation to the 'surprising omission' in the draft Manual of a reference to the 'convention, acknowledged by the Government, that Parliament should have the opportunity to debate decisions to commit troops to armed conflict, and that the debate should take place before the troops are committed, except in emergency situations'.⁵⁴² The PCRC recommended that this convention, as one which relies upon Government 'to take the initiative', 'should be included in the revised Manual'.⁵⁴³ This was another obvious success for the Committee, as in the Government Response it was clearly stated that:

As recommended by a number of Select Committees...the Cabinet Manual has been revised so that it includes more on the ways in which the Executive relates to Parliament. In particular, the Government agrees with the Committee⁵⁴⁴ that the

⁵³⁹ PCRC, *Constitutional Implications of the Cabinet Manual* (HC 2010-12, 734) 74

⁵⁴⁰ HMG, *Government Response to the House of Lords Constitution Committee, Political and Constitutional Reform Committee and Public Administration Select Committee on the Cabinet Manual Committee Reports of Session 2010-12*, October 2011 (Cm 8215) p24

⁵⁴¹ HMG, *The Cabinet Manual: A guide to laws, conventions and rules on the operation of government*, 1st edition, October 2011, 2.10

⁵⁴² PCRC, *Constitutional Implications of the Cabinet Manual* (HC 2010-12, 734) 61; this constitutional convention and whether it was to be considered sufficient was to form the subject matter of later inquiries by the PCRC, discussed below

⁵⁴³ *ibid* 61

⁵⁴⁴ Here specifically the PCRC

Cabinet Manual should include information on Parliamentary processes in relation to military action, and notes that this is the subject of ongoing consideration within Government and Parliament. Paragraphs 5.36 to 5.38 of the Cabinet Manual summarise previous parliamentary involvement in relation to military action and note that the Government has recently acknowledged that a convention had developed in the Parliament that the House of Commons should have an opportunity to debate a decision to commit troops, and that the Government proposes to observe that convention except when there was an emergency and such action would not be appropriate.

As the Committee is aware, the Government is currently exploring options for formalising the existing convention on debating military intervention in the House of Commons.⁵⁴⁵

The Committee addressed another concern on the clarity of content in relation to Ministers and Parliament. The PCRC recommended that '[D]escriptions of Parliament's expectations of Government...need to be based on evidence, such as resolutions of either House...[and] the Manual should be amended to reflect this evidence'.⁵⁴⁶ The Government again agreed with this recommendation and used its response to specifically mention that the revised Cabinet Manual 'references in a number of places the views of Parliament, for example as expressed in Select Committee reports...[and] has been amended so that it does not assume Parliament's view. Instead...refers to the Ministerial Code which clearly sets out the principles of Ministerial accountability to Parliament and reflects the relevant Parliamentary resolution on ministerial accountability.'⁵⁴⁷

Thus, as discussed above, the PCRC achieved a considerable level of success through its work on the draft Manual, which was carried through quickly to the finalised version and thus easily

⁵⁴⁵ HMG, *Government Response to the House of Lords Constitution Committee, Political and Constitutional Reform Committee and Public Administration Select Committee on the Cabinet Manual Committee Reports of Session 2010-12*, October 2011 (Cm 8215) p23; discussed below

⁵⁴⁶ PCRC, *Constitutional Implications of the Cabinet Manual* (HC 2010-12, 734) 63

⁵⁴⁷ HMG, *Government Response to the House of Lords Constitution Committee, Political and Constitutional Reform Committee and Public Administration Select Committee on the Cabinet Manual Committee Reports of Session 2010-12*, October 2011 (Cm 8215) pp23-24

identifiable. A number of areas in which its recommendations brought about palpable improvements to the Cabinet Manual related to what might be considered as technical and drafting matters rather than substantive content, as in the examples discussed above. The amendments to which the PCRC can point in these instances might have garnered less attention but are nonetheless quantifiable measures of influence. These additional recommendations which were accepted and implemented by the Government, were most notably directed at improving the clarity and referencing of the document and thereby strengthening the practical usefulness and accessibility of the Manual. Three particular elements, in this regard, were addressed by the Committee: the clarity of language; the clarity of content; and referencing. The recommendation by the PCRC to improve the clarity of the language used, noting that '[V]ague language - 'usually this' and 'normally that' ...risks limiting the Manual's usefulness as a practical tool'⁵⁴⁸ led to an improved version of the Manual. The Government subsequently 'reviewed' the draft 'to remove unnecessary uses of 'normally' or 'usually''.⁵⁴⁹ Similarly, in relation to what was considered by the Select Committee to be inadequate referencing, the Government Response noted that '[T]he increased use of referencing will make clearer where readers can access further information on particular issues'.⁵⁵⁰ Although the Government did not adopt the Committee's recommendation that an index be added to the Cabinet Manual,⁵⁵¹ it is pleasing, nonetheless, to note that the Government response agreed that 'the Cabinet Manual should be appropriately referenced' and after reviewing it had included, additional references 'where the Government considers it helpful and appropriate to do so'. Additional cross-references were also included, along with a glossary 'to explain technical terms'.⁵⁵²

⁵⁴⁸ PCRC, *Constitutional Implications of the Cabinet Manual* (HC 2010-12, 734) 25

⁵⁴⁹ HMG, *Government Response to the House of Lords Constitution Committee, Political and Constitutional Reform Committee and Public Administration Select Committee on the Cabinet Manual Committee Reports of Session 2010-12*, October 2011 (Cm 8215) p18

⁵⁵⁰ HMG, *Government Response to the House of Lords Constitution Committee, Political and Constitutional Reform Committee and Public Administration Select Committee on the Cabinet Manual Committee Reports of Session 2010-12*, October 2011 (Cm 8215) p18

⁵⁵¹ PCRC, *Constitutional Implications of the Cabinet Manual* (HC 2010-12, 734) 28

⁵⁵² HMG, *Government Response to the House of Lords Constitution Committee, Political and Constitutional Reform Committee and Public Administration Select Committee on the Cabinet Manual Committee Reports of Session 2010-12*, October 2011 (Cm 8215) p19

3. The Future of the Cabinet Manual

The commitment to scrutiny and monitoring developments and progress as a factor in the approach and working methods of the PCRC was demonstrated once more through an inquiry, which commenced several years later in February 2014, to ‘examine how the Manual was being used in practice and to consider what additions might be necessary at its revision’.⁵⁵³ The Committee had alluded to its intention to undertake further work in its earlier Report, where it stated that it would ‘monitor closely how the Cabinet Manual develops, and how it is used both within and beyond Government during the life of this Parliament’.⁵⁵⁴ Also at that time the Committee had recommended, in addition to the suggestion of regular debates on the Cabinet Manual in Parliament,⁵⁵⁵ that:

There needs to be a clear and published process, agreed with us, for updating the Cabinet Manual once it has been finalised. This process should be as open as possible, to allow for the consideration of comments and concerns about proposed changes before they are included.⁵⁵⁶

One of the most pertinent questions the Committee sought to address in its follow-up inquiry was the extent to which the Manual was achieving the aims outlined by the Government, namely ‘to provide a guide for members of Cabinet, other Ministers and civil servants in the carrying out of government business’ and to ‘bring about greater transparency about the mechanisms of government.’⁵⁵⁷ The terms of reference for this inquiry also looked to consider what revisions to the manual might be required and what the process to achieve this ought to be, particularly whether Parliament should play a role. The Report brought together the, often consistent, views of various academics and others and in that alone acts as a useful resource. In terms of recommendations, conclusions and indeed purpose, however, there was little clarity. The Committee drew conclusions but these were often rather vague and related to future hypothetical scenarios. The recommendations related to matters in which

⁵⁵³ PCRC, *Revisiting the Cabinet Manual* (HC 2014-15, 233) 2

⁵⁵⁴ PCRC, *Constitutional Implications of the Cabinet Manual* (HC 2010-12, 734) 41

⁵⁵⁵ Discussed above

⁵⁵⁶ PCRC, *Constitutional Implications of the Cabinet Manual* (HC 2010-12, 734) 50

⁵⁵⁷ Gov.uk website cited in PCRC, *Revisiting the Cabinet Manual* (HC 2014-15, 233) 2

the Committee has an interest and would like to receive the relevant data, rather than necessarily being of particular use more widely. For example, recommending ‘that the Government commission an internal assessment of the usefulness of the Cabinet Manual to Ministers and to inform its next revision’ and ‘that the Cabinet Office plan for an enhanced programme of public engagement on the contents of the Cabinet Manual following the 2015 General Election’.⁵⁵⁸ The latter of these appeared somewhat redundant, certainly not a priority, as the main body which in reality required an understanding of the procedures – with particular focus on the formation of Government section – was, as Hazell explained, the media.⁵⁵⁹ It was, and would continue to be, via the media that the vast majority of the public received this information, rather than directly accessing Government materials, however well-publicised and accessible they might be. Similarly with regards the Committee’s rather niche interest in what processes had been adopted by Government to replace the ‘Precedent Books’⁵⁶⁰ and where ‘the precedents which inform its [the Government’s] understanding of the operation of the constitution are captured and retained’.⁵⁶¹

Further recommendations were also rather out of sync with the usual approach adopted by the PCRC, for example, recommending that the Cabinet Office ‘publish... a list of matters in the Cabinet Manual which will require amendment at its next revision’! The Committee received an assurance in oral evidence from the current Cabinet Secretary, Jeremy Heywood, that the civil servants ‘keep a running tally... of various detailed areas that might need updating or do need updating’.⁵⁶² It would be unusual to say the least for such internal working documents to be published, and yet that is what the Committee was requesting. This appears to demonstrate an uncharacteristic style on the part of the PCRC and is not in congruity with the vast majority of its pragmatic and constructive work. Conversely, of course, one might argue that if there is indeed a list or ‘tally’ of required updates and amendments then this ought to be published in the interests of transparency. The New Zealand example, on which the Committee heard evidence, carries out minor modifications to its online version.

⁵⁵⁸ PCRC, *Revisiting the Cabinet Manual* (HC 2014-15, 233) 38-39

⁵⁵⁹ *ibid* 31

⁵⁶⁰ No Precedent Book has been kept since 1992, noteworthy that this was the same year John Major, as Prime Minister, published ‘Questions of Procedure for Ministers’ which subsequently became the Ministerial Code.

⁵⁶¹ PCRC, *Revisiting the Cabinet Manual* (HC 2014-15, 233) 28

⁵⁶² *ibid* 47

In relation to the UK, however, the Cabinet Secretary, and ultimately the PCRC in its Report, raised concerns that following the NZ model in this manner which would effectively lead to having two versions of the document could lead to 'conflict' and confusion. The Cabinet Secretary offered to 'discuss with Ministers whether we could, alongside the online version of the manual, have a list of the issues we already know will need to be taken into account at the next point of updating, without giving people the actual wording' - a suggestion which the Committee considered to have 'some merit'.⁵⁶³

⁵⁶³ *ibid* 49

C. Parliament's Role in Conflict Decisions

1. Introduction

The 'taming' of the Prerogative powers through codification into statute is an area which has been increasingly subject to attention and debate over recent years, since the war on Iraq.⁵⁶⁴ Inquiries have been undertaken by Select Committees, in both the House of Commons and the Lords, and by successive Governments, but, as yet, without reaching an ultimate resolution or consensual conclusion. This is despite the fact that ten years ago 'a cross-party political consensus appear[ed] to be emerging that the current arrangements [were] unsustainable'.⁵⁶⁵

This is also a subject which encompasses discussion of the often delicate balance between the Legislative and Executive functions in terms of the use of Prerogative powers, which in this context relates specifically to the power to wage war – the decision to commit British armed forces to conflict abroad – and may, legally, be taken by Government without Parliament's consent. The drive in recent years has been towards strengthening of the Parliament vis-a-vis the Government which fits into the wider programme of stronger scrutiny and accountability, in which the newly revived Select Committees have a crucial role to perform. With a change of Government comes the likelihood that many policies at various stages of implementation will be dispensed with. Whilst this is the nature of an ideological and adversarial political party system and, indeed, of democracy itself, the disadvantage is that very little is 'carried over', even amongst those policies which may attract cross-party support. This is where effective and pro-active Select Committees can help to encourage continuity of policy and ensure that where consensus does exist, they can highlight this and urge Government to act. One significant advantage which the Committees possess is the nature of their working in a less partisan and in many cases longer-term service than the

⁵⁶⁴ See also sections on PCRC Inquiries into the Role and Powers of the Prime Minister (below) and the Constitutional Implications of the Cabinet Manual (above)

⁵⁶⁵ Constitution Committee, *Waging war: Parliament's role and responsibility - Follow-up Report* (HL 2006-07, 51) 9

Ministers.⁵⁶⁶ In terms of the PCRC specifically, the encouraging ‘continuity’ aspect of its role can be most clearly observed by the Committee’s attitude towards its inquiries and Reports considering the role of Parliament in conflict decisions.

2. The Role and Influence of the PCRC

The summary of the Committee’s initial Report⁵⁶⁷ into Parliament’s role in waging war (conflict decisions) - the first of a series of three⁵⁶⁸ - indicated that the PCRC had picked up this project which had been much advanced previously by the PASC⁵⁶⁹ under the chairmanship of Wright. The Constitution Committee has also carried out inquiries in this field.⁵⁷⁰ Hence the PCRC Report clearly acknowledged that ‘much work in this direction [of a parliamentary resolution] has already been completed, and the process for decision should be relatively swift’.⁵⁷¹

The press release accompanying publication of the PCRC Report indicated that the topicality of the ‘issue in the context of the on-going military action in Libya’⁵⁷² was relevant background to, and the key impetus for the Committee’s inquiry into this matter.⁵⁷³ The Report further noted the commitment made, during the debate in the House of Commons on the Libyan conflict and the United Nations Security Council (UNSC) Resolution 1973, by the Foreign Secretary, the Rt Hon William Hague MP, to ‘enshrine in law for the future the necessity of consulting Parliament on military action.’⁵⁷⁴ In making such a commitment the (then) Foreign Secretary had made such a step much more explicitly and further than any previous Government. The PCRC stated in its initial report that it would closely monitor the Government’s progress in this area. To objectively identify ‘progress’ in this matter is rather

⁵⁶⁶ Note PCRC Report on Reshuffles: *The impact and effectiveness of ministerial reshuffles* (HC 2013-14, 255)

⁵⁶⁷ PCRC, *Parliament’s role in conflict decisions* (HC 2010-12, 923)

⁵⁶⁸ The others are: PCRC, *Parliament’s role in conflict decisions: Government Response to the Committee’s Eighth Report of Session 2010-12* (HC 2010-12, 1477); PCRC, *Parliament’s role in conflict decisions – further Government: Government’s Response to the Committee’s Ninth Report of Session 2010-12* (HC 2010-12, 1673); and PCRC, *Parliament’s role in conflict decisions: an update* (HC 2013-14, 649)

⁵⁶⁹ PASC, *Taming the Prerogative: Strengthening Ministerial Accountability to Parliament* (HC 2003-04, 422)

⁵⁷⁰ Constitution Committee, *Waging war: Parliament’s role and responsibility* (HL 2005-06, 236)

⁵⁷¹ PCRC, *Parliament’s role in conflict decisions* (HC 2010-12, 923) 5

⁵⁷² PCRC News Release, ‘Report on Parliament’s role in decisions to go to war’ (17 May 2011)

⁵⁷³ The PCRC Chair indicated this in a later blog post for the LSE, where he stated that ‘Libya was the spur for my committee to look again at Parliament’s role in decisions to go to war’:

<<http://blogs.lse.ac.uk/politicsandpolicy/2011/12/06/parliament-military-action/>>

⁵⁷⁴ HC Deb, 21 March 2011, vol 525, col 799

challenging, not least because the definition of what constitutes ‘consultation’, or in any event consultation which might be considered to be adequate and/or worthwhile, in this context is subject to various interpretations.

The Chair, in opening comments at the oral evidence session for this Inquiry, stated that it was ‘not a reaction to any immediate event’ but rather was ‘part of a long, ongoing review from a very new Committee’.⁵⁷⁵ Thus it would seem that whilst the events surrounding Libya may have precipitated the specific Inquiry; it may also be, as I have surmised elsewhere, associated with the PCRC’s long-term project examining the feasibility of codification and obviously connected with the Committee’s other work as discussed in this chapter. The PCRC Chair, also spoke in the Commons debate on the UN Security Council Resolution where he highlighted that the House was not actively taking a decision with regards Libya, but rather that the Government had already taken a decision and ‘graciously allowed’ the House a debate after the event.⁵⁷⁶ The Foreign Secretary’s view was that ‘the Prime Minister came to the House at the earliest possible moment’ to state the Government’s intention.⁵⁷⁷ Allen took the opportunity during this debate to suggest that the issue of ‘the House’s rights [as the elected Chamber] in respect of when this country goes to war’ needed to be resolved. He argued that ‘there ought to be something in our Standing Orders or in the Cabinet manual or some other place that gives the Chamber the right to be consulted before or after an action takes place’.⁵⁷⁸ The Foreign Secretary sought to allay concerns raised by members about the possibility of ‘mission creep’ explaining that ‘if the Government ever fundamentally change the nature of the mission that we have described to the House, we will return to the House for a further debate to consult it again’.⁵⁷⁹ Again, such assurances arguably further strengthened the emerging constitutional convention.

3. Background and Previous Select Committee work

⁵⁷⁵ PCRC, *Parliament’s role in conflict decisions* (HC 2010-12, 923) Ev 1, Q1

⁵⁷⁶ Re United Nations Security Council Resolution 1973, HC Deb 21 March 2011, vol 525, col 739

⁵⁷⁷ HC Deb, 21 March 2011, vol 525, col 799

⁵⁷⁸ HC Deb, 21 March 2011, vol 525, col 739

⁵⁷⁹ HC Deb, 21 March 2011, vol 525, col 799

A veritable cornucopia of work had been carried out on this particular theme prior to the change of Government after the General Election in 2010. This included Reports of two Select Committees, the PASC and the Constitution Committee.⁵⁸⁰ Additionally under the previous Government, a Green Paper in 2007 and a White Paper in 2008, were published.⁵⁸¹ The Constitution Committee recommended 'that there should be a parliamentary convention determining the role Parliament should play in making decisions to deploy force or forces outside the United Kingdom to war' and that this new convention would require Parliament to approve deployment of military forces to an armed conflict.⁵⁸² As result of the Constitution Committee's surprise at the 'the brevity and paucity of the Government's response' to their previous Report they published a follow-up report in the next Parliamentary session.⁵⁸³ This subsequent Report drew attention to the existence of cross-party consensus, which is further evidenced below. Whilst in opposition, for example, David Cameron, as Leader of the Opposition, said that 'giving Parliament a greater role in the exercise of these [prerogative] powers would be an important and tangible way of making government more accountable'. He further asked 'shouldn't there be a formal process for Parliamentary approval?'⁵⁸⁴ Similarly, the former Liberal Democrat leader Sir Menzies Campbell argued for 'a war powers act to require parliamentary approval for a declaration of war'.⁵⁸⁵

3.1. Previous Attempts to Legislate

In 2005 Clare Short, the former Labour minister who rose to prominence largely as a result of her disagreements with the (then) Government over the war in Iraq, launched a Private Members' Bill – the *Armed Forces (Parliamentary Approval for Participation in Armed Conflict)*

⁵⁸⁰ PASC, *Taming the Prerogative: Strengthening Ministerial Accountability to Parliament* (HC 2003–04, 422); Constitution Committee, *Waging war: Parliament's role and responsibility* (HL 2005–06, 236)

⁵⁸¹ HMG, *The governance of Britain: war powers and treaties: limiting executive powers* (Green Paper, Cm 7239, October 2007); HMG, *The Governance of Britain—Constitutional Renewal* (White Paper, Cm 7342-I, March 2008)

⁵⁸² Constitution Committee, *Waging war: Parliament's role and responsibility* (HL 2005–06, 236-I) 108 and 110, pp42–43

⁵⁸³ Constitution Committee, *Waging war: Parliament's role and responsibility - Follow-up Report*, (HL 2006–07, 51) 4

⁵⁸⁴ Whilst launching the Conservatives Democracy Task Force – chaired by Ken Clarke – on 6 February 2006 (referenced by Lord Kingsland HL Deb 3 Mar 2006, vol 679, col 471) See also:

<[http://www.politics.co.uk/news/cameron-questions-royal-prerogative-\\$406345.htm](http://www.politics.co.uk/news/cameron-questions-royal-prerogative-$406345.htm)>

⁵⁸⁵ Ming Campbell, 'We need to give power back to the people' (Power Commission Conference, 6 May 2006)

*Bill*⁵⁸⁶— which called for a requirement on the Government to obtain Parliamentary approval, by means of a resolution of both Houses of Parliament, for the armed forces lawfully to participate in conflict or for any formal declaration of war. This would have enabled a Prime Minister to take urgent action without approval but they would have to withdraw the troops if Parliament rejected the decision.⁵⁸⁷ The Bill was debated in Parliament in October 2005 but did not secure the necessary support at its Second Reading for a vote and hence failed, despite having some cross-party support, including from William Hague and Ken Clarke, then in opposition.⁵⁸⁸

4. The PCRC's Work

The PCRC's Inquiry into conflict decisions was foreshadowed by its review of the draft Cabinet Manual, and discussed above, where early in the Committee's existence⁵⁸⁹ the PCRC acknowledged the research already carried out in this field, and began to apply pressure to ensure that the recently developed constitutional convention – namely, that Parliament would now be consulted before Britain commits troops to conflicts – be codified.⁵⁹⁰ The Committee referred to the 'surprising' omission from the draft Manual of any mention of Parliament's role in such decisions and Committee recommended that such a convention should be clearly referred to and defined in the forthcoming Cabinet Manual.⁵⁹¹ This convention was also clearly expressed, in evidence to the Committee, by the Cabinet Secretary who explained that:

The Government believes that it is apparent that since the events leading up to the deployment of troops in Iraq, a convention exists that Parliament will be given the opportunity to debate the decision to commit troops to armed conflict and, except in emergency situations, that debate would take place before they are committed.

⁵⁸⁶ Bill 16 of Session 2005-6

⁵⁸⁷ See BBC News, 'Short challenges Blair war powers' (21 October 2005)

⁵⁸⁸ PCRC, *Parliament's role in conflict decisions* (HC 2010-12, 923) Ev 3, Q5

⁵⁸⁹ Whilst carrying out its Inquiry (launched on 17 December 2010) into the 'Constitutional Implications of the Cabinet Manual'

⁵⁹⁰ See Gus O'Donnell's evidence to the PCRC inquiry into the role and powers of the Prime Minister - PCRC, *Role and powers of the Prime Minister: Written Evidence* (17 May 2011) Ev 29

⁵⁹¹ PCRC, *Constitutional Implications of the Cabinet Manual* (HC 2010-12, 734) 61

The Committee held an oral evidence session in, March 2011, to examine the following three key questions:

- Has a convention now been established requiring the approval of the House of Commons?
- What are the circumstances in which forces could reasonably be committed before a debate and vote in the House of Commons, as happened recently in the case of Libya?
- Is a detailed parliamentary resolution needed to clarify Parliament's role, as proposed by the last Government, or should the role of Parliament in conflict decisions be enshrined in law, as the current Foreign Secretary has suggested?⁵⁹²

The inquisitorial nature of the work of the Select Committees brings to light their usefulness – if one were to take the words of the most senior civil servant in the country at face value one might assume that, with even a cursory understanding of the 'binding' nature of the constitutional convention in the UK, there was no need to attempt to put such an 'understanding' or 'rule' on a more concrete or statutory footing. Soon after, however, as a result of the PCRC's evidence session⁵⁹³ it became apparent that there was not universal agreement that a new convention had developed. Indeed there was not complete agreement amongst the three academic legal experts giving evidence to the Committee, with Payne's comment acknowledging that 'there may be [a new convention] but it is too early to say...because of the nature of conventions...we are in a situation of emergence'.⁵⁹⁴ Payne maintained this view despite the commitments voiced by the Foreign Secretary on 21 March 2011.⁵⁹⁵ The Committee's Report reflects the (then) potential lack of certainty and highlights that their 'witnesses did not share the Cabinet Secretary's view that a convention on parliamentary involvement in conflict decisions could be said to exist'.⁵⁹⁶

⁵⁹² PCRC News Release, 'Parliament's role in conflict decisions' (31 March 2011)

⁵⁹³ 31 March 2011

⁵⁹⁴ PCRC, *Parliament's role in conflict decisions* (HC 2010-12, 923) Ev 16, Q38

⁵⁹⁵ Referenced above, HC Deb, 21 March 2011, vol 525, col 799

⁵⁹⁶ PCRC, *Parliament's role in conflict decisions* (HC 2010-12, 923) 5; At the time of writing events have moved on significantly and it would be extremely difficult for one to argue that such a convention does not exist (there are, of course, still unanswered questions as to exactly what might be defined as 'waging war' etc.)

In its evidence session the Committee led an interesting discussion with the academics in trying to help define the lines between conventions, parliamentary resolutions and statutes⁵⁹⁷ and, in Laing's words, used the opportunity to get certain matters on the public record.⁵⁹⁸ The Committee's work in this area is illustrative of several aspects of the manner in which it interpreted and developed its role: first, the idea of encouraging continuity of policy development and reform; secondly, taking forward ideas of constitutional reform along with work done by other Select Committees; and thirdly, the common theme of codification (and entrenchment) underlying much of the PCRC's work. The notion of codifying prerogative powers and honing them to ensure a more formal acknowledgement of constitutional conventions is not, of course, unique to the PCRC. It does, however, play a central role in the threads which underpin the Committee's overarching work programme.

A 'holding response' was received from Government in relation to the Committee's recommendation 'that the Cabinet Manual should include a clear reference to Parliament's current role in decisions to commit forces to armed conflict abroad'.⁵⁹⁹ Yet, by the time of the Committee's third Report in this series, the Government had accepted the recommendation and included such a reference in the Cabinet Manual. The Cabinet Manual now refers to previous parliamentary involvement in relation to military action and includes the following statement:

In 2011, the Government acknowledged that a convention had developed in Parliament that before troops were committed the House of Commons should have an opportunity to debate the matter and said that it proposed to observe that convention except when there was an emergency and such action would not be appropriate.⁶⁰⁰

The PCRC made a specific recommendation, with reference to the work carried out previously, specifically with regards the *Draft Detailed War Powers Resolution* proposed by

⁵⁹⁷ PCRC, *Parliament's role in conflict decisions* (HC 2010-12, 923) Ev 5-8, Qs 12-21

⁵⁹⁸ *ibid* Ev 8, Q21

⁵⁹⁹ *ibid* 3

⁶⁰⁰ HMG, *The Cabinet Manual: A guide to laws, conventions and rules on the operation of government* (1st edition, October 2011) 5.38

the previous Government.⁶⁰¹It recommended that the Government should ‘as a first step bring forward a draft detailed parliamentary resolution, for consultation with us among others, and for debate and decision by the end of 2011’.⁶⁰²The Committee’s Report, published on 17 May 2011, quite logically, pointed out that as such a draft was already in existence that bringing forward a detailed parliamentary resolution⁶⁰³and the process for decision should be relatively swift.⁶⁰⁴It called on the Coalition Government to ‘bring forward a text for parliamentary decision, as a first step to bringing greater clarity to this key area of constitutional decision-making’.⁶⁰⁵There was detailed discussion drawing out what exceptions would need to exist in such a resolution and whether the 2008 draft resolution in the *Governance of Britain White Paper* adequately covered such scenarios.

In the News Release issued by the Committee to accompany the publication of its Report, the Chairman’s comments drew upon events in Iraq and, more recently, Libya, as providing solid justification of the need for ‘a clear statement of Parliament’s role in decisions to go to war’. Allen called for ‘a proposal from the Government that Parliament can debate before the end of the calendar year’.⁶⁰⁶

4.1. Reception of Report & Media Attention

There was surprisingly limited media interest, this being viewed as a somewhat ‘niche’ subject, although the PCRC Reports were referred to in a blog post by the UK Constitutional Law Group⁶⁰⁷and by a website called the ‘New Left Project’.⁶⁰⁸Committee Chair, Allen wrote a blog for the LSE⁶⁰⁹on 6 December 2011, to coincide with the publication of the third of the PCRC’s Reports, in which he reiterated the importance of holding the Government to its promise to enshrine in law the need for Parliamentary consultation on military action. He commented on how disappointed his Committee was with the Government’s response to its

⁶⁰¹ *The Governance of Britain—Constitutional Renewal*, March 2008, Cm 7342-I (p.53 Annex A)

⁶⁰² PCRC, *Parliament’s role in conflict decisions* (HC 2010-12, 923) 6

⁶⁰³ Assuming the will to do so existed

⁶⁰⁴ PCRC, *Parliament’s role in conflict decisions* (HC 2010-11, 923) 6

⁶⁰⁵ *ibid* p3 (summary)

⁶⁰⁶ PCRC News Release, ‘Report on Parliament’s role in decisions to go to war’ (17 May 2011)

⁶⁰⁷ Sebastian Payne, ‘Parliament’s Role in Conflict Decisions’ UK Constitutional Law Association (2 June 2011)

⁶⁰⁸ http://www.newleftproject.org/index.php/site/print_article/afghanistan_and_the_myth_of_public_opinion

⁶⁰⁹ See <http://blogs.lse.ac.uk/politicsandpolicy/2011/12/06/parliament-military-action/>

reports and its failure to address the PCRC's recommendations in detail. This was indicative of what would soon become the Committee's customary approach in terms of following up recommendations and pursuing outcomes. The third specific recommendation in the first report augured well for this style, in welcoming the 'Foreign Secretary's commitment to enshrine Parliament's role in law' whilst recognising that this was 'likely to be a longer-term project, to be considered in depth after a parliamentary resolution has been agreed, or if this route fails to bear fruit' and indicating that it would 'monitor' developments 'closely'.⁶¹⁰

4.2. Government Response

Bearing in mind previous commitments by Governments to respond to Select Committee Reports within two months,⁶¹¹ a response to this PCRC Report ought to have been received before the House rose, on 20 July 2011, for the summer recess.⁶¹² Instead the Committee received a response, in the form of a letter from the Minister for Political and Constitutional Reform, on 21 July 2011. The timing of this was described by the Committee as 'unfortunate', falling just after the House had risen. The Committee was so 'disappointed' by the lack of substance in the Government's Response⁶¹³ that it prompted a further recommendation in the PCRC's next Report - published on 14 September 2011 - instead of following the more customary procedure consisting of the Select Committee publishing the Government's Response without a further call for action.⁶¹⁴

The previous Government had failed to respond, on similar subject matter, within the conventional two months, to the Constitution Committee.⁶¹⁵ In that instance the Government response was published more than three months later.⁶¹⁶ Another similarity lay in the

⁶¹⁰ PCRC, *Parliament's role in conflict decisions* (HC 2010-11, 923) 7

⁶¹¹ See, for example: 'It is an established convention that the Government should normally respond to select committee reports within two months' PASC, *Lobbying: Access and influence in Whitehall: Government Response to First Report of Session 2008-09* (HC 2008-09, 1058) 1

⁶¹² The House was expected to rise for recess on 19 July but was recalled on 20 July.

⁶¹³ Which was published as the Committee's Ninth Report of Session 2010-12 (HC 1477)

⁶¹⁴ PCRC, *Parliament's role in conflict decisions – further Government: Government's Response to the Committee's Ninth Report of Session 2010-12* (HC 2010-12, 1673)

⁶¹⁵ Constitution Committee, *Waging war: Parliament's role and responsibility* (HL 2005-06, 236-I)

⁶¹⁶ Cm 6923 (published as Appendix to Constitution Committee, *Waging war: Parliament's role and responsibility - Follow-up Report* (HL 2006-07, 51))

Constitution Committee's view that the Government Response to its Report was 'inadequate', 'cursory'⁶¹⁷ and appeared to indicate that 'the Government do not seem convinced of their own position'.⁶¹⁸

The PCRC's follow-up Report stated that:

While we welcome the Government's undertaking to continue to involve us in future deliberations on Parliament's role in conflict decisions, we, the House and the public deserve a clearer statement of the Government's timetable for progress in this matter. We recommend that the Government provide such a statement as soon as possible after the return of the House in October.⁶¹⁹

The Government Response to this came in the form of a letter from Mark Harper, the (then) Minister for Political and Constitutional Reform, received on 23 November (thus again, falling just outside the two months). Again, the Government's response was deemed to be unsatisfactory response by the Committee and the result was yet another report, the PCRC's Twelfth Report of Session 2010-12 and the third relating to this particular inquiry. The main concern which the Committee highlighted in this later Report was, what it perceived to be, the failure of Government to recognise that, in the Committee's opinion, there was a 'case for urgency' and refusal to 'set out a fixed timetable for progress on this matter'.⁶²⁰ The Government's position was essentially that this was unnecessary as it had already clearly committed to observing the constitutional convention. For the PCRC, however, the Minister's response erroneously overlooked the suggestion made (above) borne out in its earlier report which claimed that there is not yet clear agreement that a convention does exist. The PCRC followed this up with the following and final recommendation:

⁶¹⁷ Constitution Committee, *Waging war: Parliament's role and responsibility - Follow-up Report* (HL 2006-07, 51) 5

⁶¹⁸ *ibid* 7

⁶¹⁹ PCRC, *Parliament's role in conflict decisions: Government Response to the Committee's Eighth Report of Session 2010-12* (HC 2010-12, 1477) 6

⁶²⁰ PCRC, *Parliament's role in conflict decisions – further Government Response: Government Response to the Committee's Ninth Report of Session 2010-12* (HC 2010-12, 1673) 6

The Government needs to honour the Foreign Secretary's undertaking to the House to 'enshrine in law for the future the necessity of consulting Parliament on military action', and to do so *before the end of the current Parliament*. In the absence of any other timetable, this is the one to which we will hold them.⁶²¹

There were very mixed views more widely in relation to the desirability or otherwise of placing Parliament's role in this context on a statutory footing. A Commons Library Note cited an article in a broadsheet newspaper in which senior military personnel had 'urged' the Foreign Secretary to abandon the promise made to legislate as it 'could compromise intelligence'.⁶²² It had been reported that officials had been finding it difficult 'to draw up legislation that would allow the House of Commons a formal approval role, while at the same time providing the Government with enough freedom of manoeuvre in an emergency situation'.⁶²³

The Syrian crisis provided the impetus for a further Committee Report – Parliament's role in conflict decisions: an update – in September 2013.⁶²⁴ This was the trigger for the PCRC to launch a further inquiry specifically to address the following question: 'Given the commitment made by the Foreign Secretary in March 2011, how can progress be made on enshrining in law the necessity of consulting Parliament on military action?' The PCRC Report argued that '*Now is the moment to deliver on the commitment* [to enshrine Parliament's role in law]' whilst echoing (duplicating?) a recent Constitution Committee Report on the same subject.⁶²⁵ The Lords Committee, however, reached the opposite conclusion to the PCRC in this instance, concluding that it did 'not think Parliament's role should be formalised by way of legislation

⁶²¹ PCRC, *Parliament's role in conflict decisions – further Government Response: Government Response to the Committee's Ninth Report of Session 2010-12* (HC 2010-12, 1673) 7; Note that in April 2016 the Defence Secretary, in a written statement to the Commons, said that: 'After careful consideration, the Government has decided that it will not be codifying the Convention in law or by resolution of the House in order to retain the ability of this and future Governments and the Armed Forces to protect the security and interests of the UK in circumstances that we cannot predict, and to avoid such decisions becoming subject to legal action.' (HCWS678, 18 April 2016): <<http://www.parliament.uk/written-questions-answers-statements/written-statement/Commons/2016-04-18/HCWS678>>

⁶²² 'War footing Commons veto 'dangerous' as doubt cast over plans' *Daily Telegraph* (4 January 2013) cited in House of Commons Library Briefing Paper 7166, 'Parliamentary approval for military action' (12 May 2015)

⁶²³ House of Commons Library Briefing Paper 7166, 'Parliamentary approval for military action' (12 May 2015)

⁶²⁴ PCRC, *Parliament's role in conflict decisions: an update* (HC 2013-14, 649)

⁶²⁵ PCRC, *Parliament's role in conflict decisions: an update* (HC 2013-14, 649) 7; Constitution Committee, *Constitutional arrangements for the use of armed force* (HL 2013-14, 46)

or a resolution; the risks that are associated with formalisation outweigh the benefits'.⁶²⁶ Instead the Constitution Committee concluded that:

...the existing convention—that, save in exceptional circumstances, the House of Commons is given the opportunity to debate and vote on the deployment of armed force overseas—provides the best framework for the House of Commons to exercise political control over, and confer legitimacy upon, such decisions. It is flexible, effective and consistent with the existing structure of parliamentary scrutiny of the executive. Parliamentary control over the Government in this area should remain a matter of constitutional convention.⁶²⁷

The PCRC's intentions were directly at odds with this. The opposing views in the Committee Reports, essentially indicating that the PCRC's conclusions reflect one view but there exist others which are, at least, equally valid, made it more difficult for the PCRC to do more to force the Government's hand – their recommendation lacked the necessary bedrock of support. If anything, the recent Syrian debate during which the Government's motion was defeated and the Prime Minister choose to listen to Parliament⁶²⁸ will serve to further diminish the argument the Committee had made. David Cameron's actions over the vote on Syria, demonstrated clearly that the current convention works effectively. Furthermore the House of Commons 'secured a commitment from the Government that any decision to arm the Syrian National Coalition should be taken only after the Commons has voted on the matter'⁶²⁹ - additional evidence of the objective efficacy of the current, flexible system. Yet the PCRC argued that this event served to demonstrate that 'the de facto situation on conflict decisions appears to have outpaced the legal position'.⁶³⁰ The Committee took pains to note that it was 'concerned with the democratic process only' and not the rights and wrongs of particular decisions.⁶³¹

⁶²⁶ Constitution Committee, *Constitutional arrangements for the use of armed force* (HL 2013-14, 46) summary

⁶²⁷ *ibid* 64

⁶²⁸ See HC Deb, 29 August 2013, vol 566, col 1556

⁶²⁹ Constitution Committee, *Constitutional arrangements for the use of armed force* (HL 2013-14, 46) 62

⁶³⁰ PCRC, *Parliament's role in conflict decisions: an update* (HC 2013-14, 649) 8

⁶³¹ *ibid*

The later work being pursued by the PCRC in this context can be viewed from differing perspectives, on the one hand, as noted elsewhere, the Committee is performing zealously the task which Committees have been described as notoriously bad at performing – the following-up of recommendations made, but conversely it could be argued that the focus on forcing the Government to produce legislation without acknowledging that different views exist is illustrative of a rather dogmatic approach (albeit only in this particular context). The criticism could be made that perhaps in this instance the PCRC was seeking to further its own aims – that is, the pursuit of constitutional codification – and was using this debate as a vehicle to do so, regardless of the lack of agreement and consensus on the need for legislation. Could the following comment be applied to the PCRC: ‘[I]t seems that much of the impetus for formalising Parliament’s role is to make a political statement about where decisions should be taken, rather than to correct deficiencies in the legal or military process’.⁶³²

⁶³² Constitution Committee, *Constitutional arrangements for the use of armed force* (HL 2013-14, 46) 63

D. Role and Powers of the Prime Minister

Another inquiry by the PCRC which related to codification and Prerogative Powers was that looking into the role and powers of the Prime Minister; the intention was to see how those powers were defined and held to account. This was initially classified as a 'one-off evidence session' - a method employed when a Select Committee wants to explore a subject without undertaking a full or formal inquiry. However, in the final report it was described as 'an unusually long-running inquiry'.⁶³³ In this instance, the PCRC began the process with the publication of a call for evidence in the form of an 'Issues and Questions Paper' in January 2011⁶³⁴ for which the deadline for written submissions was 28 February 2011. The Committee then followed this with an oral evidence session in June 2011.⁶³⁵ A further call for evidence was issued in December 2012 which expanded the inquiry to include additional topics, 'including... the impact of transferring to a statutory footing the prerogative power to dissolve Parliament'.⁶³⁶ An evidence session was held specifically on this aspect of the inquiry and a subsequent Report was published.⁶³⁷ This particular aspect of inquiry links to prior work the Committee had carried out into the *Fixed-term Parliaments Bill*.⁶³⁸ Finally four oral evidence sessions were held and the evidence received during along with written submissions contributed to the Committee's final Report of June 2014.

1. Background

It is worthy of note that the only (recent) attempt to codify the role and position of the Prime Minister in Britain, came in the form of a Private Member's Bill tabled by Graham Allen (subsequently Chair of the PCRC) now almost 20 years ago - the *Prime Minister (Office, Role and Functions) Bill*.⁶³⁹ In its Report the Committee used 'an updated version' of this as 'an example of what an attempt to codify the Prime Minister's role and powers could look

⁶³³ PCRC, *Role and powers of the Prime Minister* (HC 2014-15, 351)

⁶³⁴ PCRC News Release, 'Inquiry into the role and powers of the Prime Minister' (21 January 2011)

⁶³⁵ Professor Sue Pryce of Nottingham University gave evidence at this session - she was the only witness

⁶³⁶ PCRC, *Role and powers of the Prime Minister* (HC 2014-15, 351) 2

⁶³⁷ PCRC, *Role and powers of the Prime Minister: the impact of the Fixed-term Parliaments Act 2011 on Government* (HC 2013-14, 440)

⁶³⁸ Discussed below in chapter six

⁶³⁹ Bill 60 of Session 2001-02

like'.⁶⁴⁰The notion of attempting to clarify (and potentially to codify) Prime Ministerial powers tied in with the wider theme of constitutional codification being examined by the Committee. The Report explained that exploring the adequacy of 'public understanding and clarity about the Prime Minister's role and powers, and whether the checks and balances on those powers are sufficient' was designed to 'complement' the 'long-running inquiry into codifying, or not codifying, the United Kingdom's constitution'.⁶⁴¹It also links with the Committee's interest in the use of Prerogative powers in terms of conflicts, on which a series of reports was produced,⁶⁴²and finally, with the Committee's Inquiry into the 'Constitutional Implications of the Cabinet Manual'.⁶⁴³

The former Prime Minister Gordon Brown and the previous Labour Government had spent some time investigating the possibility of codification and had planned some sweeping changes in this area in the *draft Constitutional Renewal Bill*.⁶⁴⁴ Brown announced in a speech in February 2010 that he had asked the Cabinet Secretary 'to lead work to consolidate the existing unwritten, piecemeal conventions that govern much of the way central government operates under our existing constitution into a single written document'.⁶⁴⁵This was the genesis of what would become the Cabinet Manual. At the time of this speech he also announced that the key clauses of the Constitutional Reform and Governance Bill would be published.

David Cameron, then as Leader of the Opposition, before the 2010 General Election, pledged to curtail prime ministerial and prerogative powers, including specific promises to '[L]imit the power of the prime minister by giving serious consideration to introducing fixed-term parliaments, ending the right of Downing Street to control the timing of general elections';⁶⁴⁶and to '[C]urb the power of the executive by limiting the use of the royal

⁶⁴⁰ PCRC, *Role and powers of the Prime Minister* (HC 2014-15, 351) 22 and Appendix V

⁶⁴¹ *ibid* 1

⁶⁴² Discussed above

⁶⁴³ Also discussed above

⁶⁴⁴ Joint Committee on Draft Constitutional Renewal Bill, *Draft Constitutional Renewal Bill* (2007-08, HL 166-I, HC 551-I)

⁶⁴⁵ Gordon Brown, 'Towards a new politics', Speech to Institute for Public Policy Research (2 February 2010)

⁶⁴⁶ A promise which has been fulfilled with the passing of the *Fixed-term Parliaments Act 2011* (see below especially chapter six)

prerogative which allows the prime minister, in the name of the monarch, to make major decisions'.⁶⁴⁷

2. The Role and Influence of the PCRC

The style of this Inquiry indicated that its primary purpose was two-fold; first, to gather evidence and consolidate information on a matter which was particularly problematic to definitively explain, as Sue Pryce commented in evidence to the Committee, although the Cabinet Manual amounts to the 'most detailed official attempt yet to define the role of the Prime Minister...it mainly serves to demonstrate just how imprecise the position is';⁶⁴⁸ and secondly, to simultaneously link with the Committee's long-running project examining the feasibility of codification of the constitution. The 're-launch' of the inquiry in December 2012 with a further call for evidence was indicative of this wider purpose and the obvious link with the changes to the Prime Minister's role, following the advent of fixed-term parliaments, was expressly drawn upon in an oral evidence session with the Minister for Political and Constitutional Reform, and Professor Peter Riddell.⁶⁴⁹

The Committee's recommendations and conclusions were measured and pragmatic, as notably was the language and tone adopted throughout the Report. It was apparent from the evidence received during the inquiry that a wide range of views existed on most of the issues being discussed. It concluded that the 'role and powers of the Prime Minister are notoriously difficult to define conclusively, because they have evolved and continue to evolve over time' but recognised 'that there is scope to improve the checks and balances on the Prime Minister and the mechanisms by which he or she is held accountable'.⁶⁵⁰ The PCRC Report admirably draws the material together into an interesting and coherent summary which comprehensively examines the contemporary position of the Prime Minister in the UK. Whilst, somewhat unusually, the conclusions of this Report do not call for radical change, it succeeds in drawing attention to the areas which need to be monitored and potentially

⁶⁴⁷ Nicholas Watt, 'David Cameron: I would reduce No 10's power' *The Guardian* (25 May 2009); David Cameron, 'A new politics: We need a massive, radical redistribution of power' *The Guardian* (25 May 2009)

⁶⁴⁸ PCRC, *Role and powers of the Prime Minister* (HC 2014-15, 351) 9

⁶⁴⁹ PCRC News Release, 'Evidence taken on practical implications of fixed-term Parliaments' (20 June 2013)

⁶⁵⁰ PCRC, *Role and powers of the Prime Minister* (HC 2014-15, 351) 86

clarified or consolidated further in the future. The Committee explicitly states that its 'intention has been to provoke debate about the role and powers of the Prime Minister, and how they should change in the years to come'.⁶⁵¹ The press release which accompanied the Report's publication called for 'more clarity on the Prime Minister's powers'.⁶⁵² Greater clarity would consequently lead to improved opportunity for scrutiny. This aspect is especially significant in shifting the balance of power back towards Parliament and providing members of the House of Commons, in particular, with enhanced ability to hold the Head of Government to account. To borrow some words from the Committee's Report: 'Effective checks and balances, and strong accountability mechanisms, ultimately lead to better decisions. This is good for Parliament, for the Government, for the Prime Minister, and, most importantly, for the public'.⁶⁵³

Recommendations included 'several practical reforms to improve accountability mechanisms, such as placing more prerogative powers on a statutory footing'.⁶⁵⁴ Also several recommendations were framed as 'requests' to Government, for example to 'explore in a Green Paper the arguments for and against' putting the PM's role on a statutory footing 'so that the next Parliament can decide the issue'.⁶⁵⁵ There was a 'request' for Government to 'consider' an investiture vote (or other roles for Parliament) for the Prime Minister after a General Election.⁶⁵⁶ This notion of an investiture vote was something the Committee had discussed at a much earlier stage and, at that time, intimated that they would look at it again the future and thus provides another instance of the Committee demonstrating continuity in its work and following through on stated intentions.

The Report which was ultimately produced by the PCRC provides a useful and thoughtful contribution to the wider debate and attempts to address the matter of public awareness and education around the role of the Prime Minister. No response, however, was received from Government.

⁶⁵¹ *ibid* 88

⁶⁵² PCRC New Release, 'PM's powers need more clarity' (24 June 2014)

⁶⁵³ PCRC, *Role and powers of the Prime Minister* (HC 2014-15, 351) 88

⁶⁵⁴ *ibid*

⁶⁵⁵ PCRC, *Role and powers of the Prime Minister* (HC 2014-15, 351) 15

⁶⁵⁶ *ibid* 69

3. Conclusion

The separate but interwoven inquiries discussed above indicate several things: first, that there is no doubt that the PCRC had an early and tangible effect on Government, initiating discussion and bringing about crucial changes, such as those to the Cabinet Manual; secondly, through adopting a strategic approach to its work the Committee was able to 'tie in' its smaller inquiries with the overarching project around codification; thirdly, through this research the PCRC also strengthened the evidence base and range of matters upon which its long-term project would draw; and finally, these inquiries helped to raise the level public awareness around constitutional matters generally.

One additional point worth reiterating is how the publication of the Cabinet Manual – despite emphasis that it was not in any way intended to be a step towards a codified constitution – was used as an opportunity for the PCRC Chair to presage the Committee's later inquiry around the possibility of appointing a constitutional convention for the UK.

Chapter Five: The Committee as a Forum for Research, Evidence Collection & the Dissemination of Information

1. Introduction

This chapter of my thesis seeks to examine the working methods and approach adopted by the Committee through the lens of particular inquiries which have been chosen to effectively illustrate the inimitable work of the Committee, both in gathering evidence and disseminating (evidence-based) information on constitutional matters of importance. There are commonalities and overlaps in terms of the various functions which the PCRC performed in undertaking each of its inquiries, for example, obvious links between the research discussed below and the Committee's long-term inquiry reviewing constitutional process and the procedure of change.⁶⁵⁷ Although some elements of the PCRC's work were reactive, in response to Government proposals and other developments, most was prompted, not by external events, but through its own initiative. It is this part of the Committee's labours which is most likely to prove significant in terms of its legacy, particularly since the PCRC was not reappointed following the General Election in 2015; and will be considered through the following inquiries: Rules of Royal Succession; Voting for Convicted Prisoners; and the Seminar on the Reform of the House of Lords.

⁶⁵⁷ Discussed above and throughout

A. Rules of Royal Succession⁶⁵⁸

1. Background

The 2012-13 session of Parliament saw the introduction of a Bill to revise the rules of Royal Succession. This required amendments to be made to a number of existing pieces of legislation, including the *Bill of Rights*, the *Act of Settlement*, the *Act of Union with Scotland*, the *Royal Marriages Act*, and the *Regency Act*.⁶⁵⁹ Interest in the matter was piqued by the marriage, in April 2011, of Prince William, third in line to the Throne, and the real possibility that the question of succession, and consequently the discrimination which existed in the rules at the time, would become relevant if the Duke and Duchess of Cambridge were to have a child, and that child were to be a girl.

Following a unanimous decision by the Commonwealth Heads of Government at a summit in Perth, Australia in October 2011⁶⁶⁰, the indications were that the legislative modifications would merely be a matter of procedure, albeit complicated by the need to co-ordinate the process between the 16 Commonwealth Realms which recognise the British Sovereign as Head of State.⁶⁶¹ This is as a result of the preamble to the *Statute of Westminster 1931* which states that changes which affect the Sovereign must be agreed by all 16 Realms.⁶⁶² The co-ordinating function fell to a New Zealand working group, led by Rebecca Kitteridge, the Cabinet Secretary and Clerk of the Executive Council, formed to discuss the best way of accomplishing reform in all the countries concerned.⁶⁶³ The DPM made specific reference to Kitteridge's work at the Bill's Second Reading.⁶⁶⁴ The changes proposed, and announced, following the October Commonwealth Heads of Government Meeting (CHOGM), to end the

⁶⁵⁸ Political and Constitutional Reform Committee, *Rules of Royal Succession* (HC 2010-12, 1615)

⁶⁵⁹ Also the *Accession Declaration Act*, *Princess Sophia's Precedence Act*, the *Union with Ireland Act* and the *Coronation Oath Act*.

⁶⁶⁰ For the text of the so-called 'Perth Agreement' see PCRC (HC 2010-12, 1615) Annex 1

⁶⁶¹ Statement of Friday 28 October 2011 issued at Perth following a meeting of the 16 Realms of HM Queen Elizabeth II (PCRC, *Rules of Royal Succession*, (HC 2010-12, 1615) Annex 1)

⁶⁶² There are 15 Commonwealth Realms in addition to the UK: Australia, New Zealand, Canada, Jamaica, Antigua and Barbuda, Belize, Papua New Guinea, St Christopher and Nevis, St Vincent and the Grenadines, Tuvalu, Barbados, Grenada, Solomon Islands, St Lucia and The Bahamas. Note that this (being contained in the preamble rather than the body of the legislation) is convention as opposed to law.

⁶⁶³ No. 10 Press Release, 'Prime Minister unveils changes to royal succession' (28 October 2011)

⁶⁶⁴ HC Deb 22 January 2013, vol 557, col 211

system of male preference primogeniture and 'remove the barrier to those who marry Catholics retaining their position in the line of succession'⁶⁶⁵ would, in the words of the PCRC, 'remove two elements of discrimination in determining the succession to the throne, while maintaining its traditional hereditary character'.⁶⁶⁶ In an interesting aside, it was rather apt that the theme for Commonwealth Day 2011 was 'Women as Agents of Change'⁶⁶⁷ as referred to by Her Majesty the Queen upon opening the 2011 CHOGM.

In the UK, notwithstanding fairly extensive press coverage - which indicated that outside Westminster a broad consensus seemed to exist with regards to the changes⁶⁶⁸- within Parliament and political circles there was little mention of the matter, perhaps largely because it was generally acknowledged to have cross-party support.⁶⁶⁹ In evidence to the Constitution Committee it was made clear that the Government had not 'anticipated it [the Bill] to be fundamentally controversial'⁶⁷⁰ but rather that it was 'straightforward' and 'seemed to enjoy complete consensus' (not just in the UK but across the 16 realms).⁶⁷¹ The only recent reference in Hansard, preceding the debates which dealt with the legislative detail, was a question put to the DPM by Edward Leigh, a Roman Catholic with an interest in the matter as to '[W]hat recent discussions he has had on changes to the law on succession to the throne'.⁶⁷²

⁶⁶⁵ HC Deb 15 Nov 2011, vol 535, col 679

⁶⁶⁶ PCRC News Release, 'MPs welcome proposed changes to the rules of royal succession' (7 December 2011)

⁶⁶⁷ HM Queen Elizabeth II, Speech opening the Commonwealth Heads of Government Meeting, 28 October 2011 accessed via:

<<http://www.royal.gov.uk/LatestNewsandDiary/Speechesandarticles/2011/SpeechopeningtheCommonwealthHeadsofGovernmentMeeti.aspx>>

⁶⁶⁸ Except in the *Financial Times*: <<http://www.ft.com/cms/s/0/7637fe14-0624-11e1-ad0e-00144feabdc0.html#axzz1jcalFmsh>> and note concerns raised by Charles Moore, 'Hark what discord follows when you meddle with the monarchy' *Daily Telegraph* (16 December 2011)

⁶⁶⁹ For example, BBC, 'Girls equal in British throne succession' (28 October 2011); Nicholas Watt, 'Royal succession gender equality approved by Commonwealth' *The Guardian* (28 October 2011); Andy Bloxham and James Kirkup, 'Centuries-old rule of primogeniture in Royal Family scrapped' *Daily Telegraph* (28 October 2011)

⁶⁷⁰ Constitution Committee, *Annual evidence session with the Deputy Prime Minister* (9 January 2013) - Corrected evidence Chloe Smith MP, Q11

⁶⁷¹ Constitution Committee, *Annual evidence session with the Deputy Prime Minister* (9 January 2013) - Corrected evidence Nick Clegg MP, Q13

⁶⁷² HC Deb 15 Nov 2011, vol 535, col 679

2. The Role and Influence of the PCRC

The approach employed by the PCRC in this instance was to act very promptly and to convene a ‘one-off’ evidence session, in public, with constitutional experts, whilst the CHOGM was still in process. The aim, whilst welcoming the Government’s proposals in removing discrimination, was ‘to examine the constitutional implications of any changes agreed... or the implications of any lack of agreement’.⁶⁷³ This served to highlight potential remaining anomalies such as the issue of the continued ineligibility of women to succeed to hereditary peerages and the bigger question of the future role of the Crown in the Church of England.

The Committee performed the function of bringing together academics, namely, Professor Robert Blackburn, Professor of Constitutional Law, King’s College London and Dr Robert (Bob) Morris, Honorary Research Fellow, Constitution Unit, University College London, to compile relevant evidence.⁶⁷⁴ The material gathered at this session, along with written evidence provided by Blackburn, was promptly published, on 7 December 2011, in the form of a concise Report.⁶⁷⁵ Through adopting an efficient and tightly focused approach the Committee was able to demonstrate it could contribute to this historic constitutional change by acting as a valuable forum for research, evidence collection and the dissemination of information. The accessible style in which the Committee’s Report was written and, perhaps more significantly, its brevity further contributed to this. In addition, various questions which were asked by members of the Committee from various regions of the United Kingdom during the hearing helped to ensure a broader outlook was applied to the discussion. The Committee itself regarded this Inquiry as one which successfully fulfilled the Select Committee ‘core task two’, namely the ‘examination of deficiencies’.⁶⁷⁶

It might be questioned whether this Inquiry was the most productive use of the PCRC’s time, bearing in mind that the Constitution Committee, as per its specific terms of reference, could

⁶⁷³ See PCRC News Release, ‘MPs to explore changes to the rules of royal succession’ (27 October 2011)

⁶⁷⁴ Held on 10 November 2011

⁶⁷⁵ PCRC (HC 2010–12, 1615); The Constitution Committee’s Report was brief at a mere ten pages.

⁶⁷⁶ Liaison Committee, *Select committee effectiveness, resources and powers* (HC 2012-13, 697-II) Ev w41, 2

be expected to also publish a Report on the (future) legislation.⁶⁷⁷ In this instance, however, the inquiries held by both of the Select Committees and their respective Reports were very much complementary; a good example of balanced and well-thought-out work. Both Reports helped to inform the debate and contributed on different aspects of the proposed changes. The PCRC's Report being produced at an early stage, that is, once the proposals had become public knowledge, but before legislation was drafted and consequently before the scope of the Bill had been defined; the Constitution Committee Report being produced later, in January 2013, and specifically focused on the legislation as introduced into the House of Commons.⁶⁷⁸ Consequently the PCRC Report was not 'tagged' in the Parliamentary debates. The key criteria usually employed when deciding whether to request a tag are relevance and usefulness; this is not to suggest that the PCRC Report was not of relevance but rather that by the time the Bill reached the House of Commons, receiving its First Reading on 13 December 2012, the PCRC Report, and the related evidence, published as appendices, was a year old, whereas the Constitution Committee's Report (which was specifically addressing the Bill) had been published much more recently. This presumably was why its Report was tagged⁶⁷⁹ and not that of the PCRC.⁶⁸⁰

The Constitution Committee Report - which focused on a concern that the legislation was unnecessarily being fast-tracked and thus there would be inadequate time for debate and parliamentary scrutiny – also referenced points raised by the PCRC, specifically in terms of what the Constitution Committee referred to as the 'unintended consequences' of the Bill, for example, in removing the ban on Monarch's marriage to a Roman Catholic, there is a need to consider canon law which places an obligation on Catholics to raise children in that faith. The corresponding Government response to the PCRC⁶⁸¹ was also referenced in the Constitution Committee's Report, in the context of the Government's view that it has 'no current intention of changing' the relationship between the Church and State in England.⁶⁸²

⁶⁷⁷ When one considers that Lords Committee's terms of reference, include examining 'the constitutional implications of all public bills coming before the House'

⁶⁷⁸ Constitution Committee, *The Succession to the Crown Bill* (HL 2012–13, 106)

⁶⁷⁹ To the debates in the House of Lords

⁶⁸⁰ Correspondence with Committee Clerk, August 2013

⁶⁸¹ Political and Constitutional Reform Committee, *Rules of Royal Succession: Government Response to the Committee's Eleventh Report of Session 2010-12* (HC 2012-13, 586)

⁶⁸² Constitution Committee, *The Succession to the Crown Bill* (HL 2012–13, 106) 24

The Government response to the PCRC Report was not received until 15 August 2012, eight months after the publication of the Committee's Report and considerably longer than the conventional two months.⁶⁸³ The news release which accompanied publication of the Government's Response also highlighted that it agreed 'with the Committee's view that the Royal Marriages Act is long overdue for reform'.⁶⁸⁴ The Government addressed the specific recommendations and points raised by the PCRC in its Report despite a general acknowledgement, that although it had indeed raised issues of public interest, these were not something which the Government intended to address at this time. The explanation behind the Government's reasoning was two-fold: first, that as these proposals were designed to modernise the existing laws on succession to the Crown, as per the 'Perth Agreement' 'which took some considerable time to negotiate,[and]precludes the addition of any other measures into legislation designed to effect these changes'; and secondly, some of the ideas advanced by the PCRC would apply only to the United Kingdom and therefore it would be inappropriate for this particular legislation 'to deal with matters which affect the Realms and others which do not'.⁶⁸⁵ For example, the PCRC raised a concern in relation to the succession to hereditary peerages (in so far as the holders of hereditary peerages continue to be eligible for membership of the House of Lords) in that 'the way in which their titles are inherited, and its effect on the gender balance in Parliament, remain matters of public interest'.⁶⁸⁶ In relation to this aspect, the Government accepted that is a matter of 'public interest' but explained that it considered primogeniture and the aristocracy to be a separate issue to that of royal succession, and indeed one which would be 'far more complicated to implement fairly'.⁶⁸⁷

Another specific matter raised by the Committee was in relation to the other key measure in relation to succession, that of the role of religion and the established church. The PCRC welcomed 'the proposal that would allow a member of the royal family to marry a Roman

⁶⁸³ PCRC, *Rules of Royal Succession: Government Response to the Committee's Eleventh Report of Session 2010-12* (HC 2012-13, 586)

⁶⁸⁴ PCRC News Release, 'Chair welcomes Government response to Committee report on Rules for Royal Succession' (10 September 2012)

⁶⁸⁵ PCRC, *Rules of Royal Succession: Government Response to the Committee's Eleventh Report of Session 2010-12* (HC 2012-13, 586) p2

⁶⁸⁶ PCRC, *Rules of Royal Succession* (HC 2010-12, 1615) 17

⁶⁸⁷ PCRC, *Rules of Royal Succession: Government Response to the Committee's Eleventh Report of Session 2010-12* (HC 2012-13, 586) p2

Catholic without losing their place in the line of succession.⁶⁸⁸ The existing provision is anomalous in discriminating solely against Roman Catholics and those who wish to marry them'.⁶⁸⁹ This was uncontroversial, however, the PCRC also raised a more provocative point, namely that in the Committee's view the proposal to remove the bar on those in line to the throne marrying a Roman Catholic raised 'questions about the future role of the Crown in the Church of England, which the House may wish to consider in due course'.⁶⁹⁰ Unsurprisingly, this was not accepted by Government and indeed, the Minister took it as an opportunity to reiterate the Government's support for the retention of the established Church of England.⁶⁹¹ The final aspect of the PCRC's Report which called for a response, related to the prospect of reforming the *Royal Marriages Act 1772*, a piece of legislation which was out-dated, overdue for reform and, in a view shared by Government, was unjustifiably broad in scope.⁶⁹² The PCRC Report cited Bogdanor's comment that 'there are, perhaps, few more absurd pieces of legislation on the statute book'.⁶⁹³ The Government response to this explained that the forthcoming legislation would replace the *Royal Marriages Act*⁶⁹⁴ with a provision relating only to the first six in the line of succession, a much more practical and less cumbersome position.⁶⁹⁵

The Government's departmental business plans,⁶⁹⁶ and the additional transparency which the publication of these provided, is demonstrated through the respective ease with which one might track and monitor the Government's action on a particular assurance. For example, in this particular instance the Cabinet Office Business Plan contained the following commitment: 'Action 3.6.i Following consultation with Commonwealth Realms, introduce legislation to amend succession laws and the Royal Marriages Act' which was scheduled to be completed

⁶⁸⁸ Although they would themselves have to remain in communion with the Church of England

⁶⁸⁹ Political and Constitutional Reform Committee, *Rules of Royal Succession* (HC 2010–12, 1615) 14

⁶⁹⁰ *ibid*

⁶⁹¹ A statement which was later picked up by the Lords Constitution Committee

⁶⁹² Political and Constitutional Reform Committee (HC 2010–12, 1615) Blackburn – Ev 11, 1; Recommendation at para 18

⁶⁹³ Vernon Bogdanor, *The Monarch and the Constitution* (OUP, 1995) 59 cited in PCRC (HC 2010–12, 1615) 18

⁶⁹⁴ This was not mentioned in the Perth agreement, but had been referred to by the Prime Minister in an invitation to the Heads of Government of the Commonwealth Realms to consider issues relating to succession – see Explanatory Notes, *Succession to the Crown Act 2013*

⁶⁹⁵ *Succession to the Crown Act 2013* s.3

⁶⁹⁶ Discussed elsewhere

in May 2013.⁶⁹⁷ The Bill was introduced in the House of Commons on 13 December 2012 and the *Succession to the Crown Act 2013* received Royal Assent on 25 April 2013. It could not, however, come into force until the other 15 realms had also made the relevant amendments to their own arrangements. This was completed in due course, and, by virtue of *The Succession to the Crown Act 2013 (Commencement) Order 2015*, the legislation was brought fully into force on 26 March 2015.⁶⁹⁸

2.1. Influence in Parliament and beyond

Although, as discussed above, the PCRC Report itself was not tagged in the House of Commons debates, three of the Committee members, Eleanor Laing, Andrew Turner and Paul Flynn,⁶⁹⁹ took part in the debate at Second Reading.⁷⁰⁰ It is reasonable to draw a correlation between their work, as members of the Committee, and their contribution to the discussion on the floor of the House; it is likely that as a result of Committee membership they will have been able to make better-informed and evidence-based contributions – a view supported by correspondence with Committee members. Such examples provide demonstrable evidence of a wider benefit, to individuals, of Select Committee membership, specifically that of education; the opportunity for members – even those long-established parliamentarians, but more obviously the newer MPs – to improve their knowledge. In the case of the PCRC there can be little doubt that, by virtue of the debates the Committee has held (both internally and in public), the interaction with the witnesses which come before it and its role in producing coherent, informed and, often, persuasive reports, the members of the Committee have advanced their knowledge and understanding of constitutional matters. This individual improvement has additional advantages for Parliament more widely – helping to bring about a deeper level of debate on crucially important matters, which as the Chair has acknowledged are all too frequently ‘considered to be dry and academic’.⁷⁰¹ One example of this is reflected

⁶⁹⁷ Cabinet Office revised (2012) Business Plan: <<http://transparency.number10.gov.uk/business-plan/1/78>>

⁶⁹⁸ *Succession to the Crown Act 2013 (Commencement Order) 2015*, SI 2015/894

⁶⁹⁹ However, as a strident republican Flynn’s personal amendments should not be considered as a reflection of the Committee’s views nor its working methods. Indeed his suggested amendments have been described as ‘mischievous’ – George Trefgarne, ‘The Succession to the Crown Bill is a constitutional can of worms’ *The Spectator* (22 January 2013)

⁷⁰⁰ HC Deb 22 January 2013, vol 557, cols 186 – 284

⁷⁰¹ Liaison Committee, *Select committee effectiveness, resources and powers* (HC 2012-13, 697-II) Ev w42, 4

in the concern raised by Eleanor Laing that the time allocated to debate a ‘constitutional’ Bill⁷⁰² should be ‘more time than is allocated to ordinary Bills’ particularly as in that context neither the ‘end of the parliamentary Session’ or ‘the imminent birth of the new member of the royal family’ were so close that the House ‘could not have more than one day to debate the Bill’.⁷⁰³ It also interesting to note the tangible influence which a Select Committee had in relation to the procedure around the ‘fast-tracking’ of legislation, although the Committee in this particular example was the Lords Constitution Committee rather than the Commons PCRC. In a 2009 Report the Constitution Committee had called upon Government to provide ‘explanations’ as to why it considered certain pieces of legislation should be expedited or fast-tracked through Parliament and recommended that an oral ministerial statement should be made.⁷⁰⁴ The Constitution Committee was able, by the time of its Report on the Succession to the Crown Bill, to note ‘with approval the rapid emergence of a constitutional convention whereby, when ministers decide to promote fast-track legislation, a set of explanations is provided to Parliament’.⁷⁰⁵ In relation to the *Succession to the Crown Bill*, the Explanatory Notes stated that:

Agreeing to the content of the Bill has required much effort on the part of the Realms’ Governments, ably coordinated by New Zealand. In the Government’s view it is now incumbent on the United Kingdom to act quickly to introduce legislation which accords with what has been agreed. Moreover, following the recent announcement that the Duchess of Cambridge is pregnant, the Government believes that there is a general consensus that the law should be changed as soon as possible.⁷⁰⁶

⁷⁰² The issues around the treatment of ‘constitutional’ legislation in the parliamentary process are touched upon above at chapter one and in chapter six

⁷⁰³ HC Deb 22 January 2013, vol 557, cols 195-6; the Constitution Committee voiced similar thoughts – ‘In our view, the use of fast-track legislation, while it may be necessary for reasons of emergency and overriding public interest, will rarely, if ever, be appropriate for significant constitutional matters. It is never appropriate for reasons of, in the Deputy Prime Minister’s words, ‘pragmatic business management’.

⁷⁰⁴ Constitution Committee, *Fast-track legislation: constitutional implications and safeguards* (HL 2008–09, 116) 186

⁷⁰⁵ Constitution Committee, *Fast-track legislation: constitutional implications and safeguards* (HL 2012–13, 106) 13

⁷⁰⁶ *Succession to the Crown Bill*, Explanatory Notes, 17

The proposed changes to the rules of royal succession captured the attention of the public and the press in a manner unlike many of the 'academic' or 'dry' topics which the PCRC has investigated, for example, the *Huffington Post* discussed the PCRC's work in an article named 'Kate Middleton, Downton Abbey And The Queen: MPs On Royal Succession Law Changes'!⁷⁰⁷ In January 2013, the Chair issued a news release in which the Government was 'urged' to ensure careful consideration of the consequential questions which the proposal raised about the future role of the Crown in the Church of England.⁷⁰⁸ The Committee's Report received a number of mentions in the media, from broadsheet newspapers to tabloids and specialist publications.⁷⁰⁹

As discussed above, the PCRC's Report addressed not only the forthcoming legislative measures taking forward the changes to the rules of succession in the Realms but also drew attention to related issues including the future role of the Crown in the Church of England.⁷¹⁰ During the hearing, discussion was also centred on potential changes to succession with regards to hereditary peerages, and in particular, those peerages which were attached to a seat in the House of Lords. In the Committee's view the continued ineligibility of women to succeed to the majority of hereditary peerages remained 'a matter of public interest for as long as it has an impact on gender balance in the House of Lords'.⁷¹¹ Although, as the Government explained, the scope of the *Succession to the Crown Act* was insufficiently expansive so as to include such matters, the debate nonetheless highlights that these are matters which deserve further consideration in the contemporary world. With that in mind, a final point of interest was the reference made during the inquiry to particular contemporary influences on constitutional developments. What might be deemed to be rather 'niche' matters of limited impact had been raised, coincidentally, in the consciousness of the public

⁷⁰⁷ Dina Rickman, 'Kate Middleton, Downton Abbey And The Queen: MPs On Royal Succession Law Changes', *Huffington Post* (7 December 2011)

⁷⁰⁸ PCRC News Release 'Chair urges Government to reconsider Committee's report on royal succession' (9 January 2013)

⁷⁰⁹ 'In praise of...disestablishment', *The Guardian* (8 December 2011); Rowena Mason, 'Queen's role as head of Church of England 'may no longer be appropriate'', *Daily Telegraph* (6 December 2011) and 'Monarch may no longer head the Church of England' *Daily Telegraph* (12 December 2011); 'Lords bid for Ladies', *The Sun* (7 December 2011); 'Parliament committee questions on allowing Catholics in royal family', *CatholicCulture.org* (7 December 2011); and *Bloomberg Business Week* <<http://www.businessweek.com/news/2011-12-08/equality-for-princesses-risks-church-link-u-k-lawmakers-say.html>>

⁷¹⁰ Political and Constitutional Reform Committee, *Rules of Royal Succession* (HC 2010-12, 1615) 14

⁷¹¹ *ibid* 17

through a fictional scenario in a recent television drama.⁷¹² This was referred to during the Committee's oral evidence session⁷¹³ and was notable in that it dovetailed rather neatly with the Committee's admirable attempt to engage more with the public. Public engagement was an area in which the PCRC achieved a high level of success in terms of widening engagement and bringing about an increased level of public participation in consultation. Furthermore the role of the Select Committee in relation to engaging and interacting with the world outside Westminster, and the importance of so doing, is something which has risen to prominence in recent years through the introduction of the revised core tasks for Select Committees.⁷¹⁴

⁷¹² Namely, the ITV's 'Downton Abbey'; BBC, 'Peers 'should end Downton Abbey-style succession rules' (7 December 2011)

⁷¹³ Political and Constitutional Reform Committee, *Rules of Royal Succession* (HC 2010-12, 1615) Ev 4, Q10

⁷¹⁴ Discussed elsewhere

B. Voting by Convicted Prisoners⁷¹⁵

With regards to its inquiry into the controversial matter of the electoral franchise and whether convicted prisoners should be permitted to vote⁷¹⁶ the PCRC took, what was now becoming, in terms of its working methods, a customarily proactive role. The Committee gathered together evidence on the domestic law vis-a-vis the Strasbourg court's decisions on the matter from experts, notably, with a range of differing views, solely for the purpose of compiling relevant evidence-based information. Witnesses included a former Lord Chancellor and a QC specialising in human rights. The Committee's Report was clearly intended to inform, by effectively exploring the current legal position, the forthcoming Parliamentary debate on the matter in which it was 'tagged' as a relevant document.⁷¹⁷ Indeed this intention was explicitly stated by the Committee which published its Report 'to make the evidence we have heard readily accessible in advance of the debate on voting by prisoners which is to take place on 10 February 2011'.⁷¹⁸

1. General Background and Contextual Setting⁷¹⁹

Whilst it might be considered to be an important debate in terms of democracy, in practical terms a relatively small number of people are affected by the existing prohibition in the UK, with an estimated 71,549 sentenced prisoners denied the ability to vote.⁷²⁰ The matter rose to prominence in the UK through a case brought by a convicted murderer, John Hirst, culminating in a decision by the European Court of Human Rights (ECtHR) that the UK's

⁷¹⁵ This inquiry also has a direct link with the drive towards greater codification

⁷¹⁶ Prisoners serving a custodial sentence are not currently allowed to vote at any elections in the UK due to the disenfranchisement provided for in s.3 *Representation of the People Act 1983*

⁷¹⁷ Political and Constitutional Reform Committee, *Voting by convicted prisoners: summary of evidence* (HC 2010-12, 776) 4; PCRC News Release, 'MPs hear from legal experts on voting by convicted prisoners' (1 February 2011); HC Deb 10 February 2011, vol 523, cols 493 - 586

⁷¹⁸ Political and Constitutional Reform Committee, *Voting by convicted prisoners: summary of evidence* (HC 2010-12, 776) 1

⁷¹⁹ For comprehensive background to the matter of prisoner voting rights see the following: House of Commons Library SN/PC/01764, *Prisoners' Voting Rights* (4 July 2012); House of Commons Library SN/PC/01764, *Prisoners' voting rights (2005 to May 2015)* (11 February 2015); House of Commons Library CBP 7461, *Prisoners' Voting Rights: developments since May 2015* (15 February 2016)

⁷²⁰ Key Facts and Figures in Written evidence submitted by the Prison Reform Trust relating to the situation as at 17 December 2010, Political and Constitutional Reform Committee, *Voting by convicted prisoners: summary of evidence* (HC 2010-12, 776) Volume II Ev w1

current ban, on all prisoners serving a custodial sentence from voting, contravenes Article 3 of Protocol No 1 of the European Convention on Human Rights (ECHR) – the right to free and fair elections.⁷²¹ Since then the issue of extending the franchise to convicted prisoners has been high-profile and both emotionally and politically rather fraught. Following a further ECtHR decision against the UK with *Greens and MT*, in November 2010,⁷²² which set a deadline for the introduction of draft legislation by August 2011, a Government proposal was announced by the Cabinet Office.⁷²³ Three days later, the Minister for Political and Constitutional Reform, Mark Harper, announced in a Written Ministerial Statement that the current ‘blanket ban’ would be replaced and that whilst offenders ‘sentenced to a custodial sentence of four years or more will lose the right to vote in all circumstances...Offenders sentenced to a custodial sentence of less than four years will retain the right to vote [in UK Westminster Parliamentary and European Parliament elections as this was understood to be the legal minimum], but legislation will provide that the sentencing judge will be able to remove that right if they consider that appropriate’.⁷²⁴ Harper, in acknowledging the strong views on this issue both within and outside Parliament, made clear that this was a ‘legal obligation’ and not a ‘choice’. It was, appropriately, the legalities of the matter upon which the PCRC also chose to focus its attention, not ‘whether extending the right to vote to convicted prisoners in certain circumstances would be philosophically, morally or politically justifiable’.⁷²⁵

2. The Role of the Backbenches

It was largely as a result of backbench influence that there was Parliamentary time dedicated to debating this matter. The motion came via the Backbench Business Committee,⁷²⁶ chaired by Natascha Engel, as a result of cross-party representations made before the Committee on

⁷²¹ *Hirst v United Kingdom*(No. 2) 74025/01 [2005] ECHR 681; the applicant in this case, John Hirst, submitted written evidence to the PCRC which was published as PV3 and PV3(A) on 8 February 2011; Prisoners on remand are able to vote under the provisions of the *Representation of the People Act 2000*.

⁷²² *Greens and M T v United Kingdom* 60041/08 [2010] ECHR 1826

⁷²³ Cabinet Office Press Release, ‘Government approach to prisoner voting rights’ (17 December 2010)

⁷²⁴ HC Deb 20 December 2010, vol 520, col 151WS

⁷²⁵ Political and Constitutional Reform Committee, *Voting by convicted prisoners: summary of evidence* (HC 2010-12, 776) 22

⁷²⁶ The Backbench Business Committee was another of the Wright Report’s innovations – discussed in chapter one

Tuesday 18 January 2011.⁷²⁷ The instigators of this debate were the former Labour Justice Secretary, Jack Straw, and David Davis, from the Conservative benches. The proposal for a debate on a votable motion on the floor of the House of Commons (there had been a previous debate in Westminster Hall)⁷²⁸ focused on the need for a substantive debate within the elected Chamber and highlighted that the ECtHR judgment stated that Parliament had not had 'any substantive debate' on this issue.⁷²⁹ Davis made the point that it was 'important that Parliament, rather than the Government, comes to a substantive decision on this'.⁷³⁰ This, of course, ought to be viewed within the context of a wider pattern of the revitalisation of Parliament.⁷³¹ The discussion within the Backbench Business Committee was itself interesting with the members of the Committee rigorously questioning the proposers of the motion. In so doing they solidly demonstrated the, new, but pivotal role that the Committee plays in representing backbenchers as a whole and the importance in ensuring the Committee does not exist merely to give voice to opponents of the Government, for example, see the comments made by the Chair in relation to 'embarrassing' the Government.⁷³²

3. The Role and Influence of the PCRC

The PCRC's evidence session⁷³³ and subsequent Report⁷³⁴ is another clear example of the particular role the Committee carved out for itself, as a forum for research. As noted above, the Committee clearly explained that its Report was published in order to make the evidence it had heard 'readily accessible in advance of the debate...in the Commons'.⁷³⁵ The written evidence which was submitted to the Committee was also published in advance of the Commons debate.⁷³⁶ There was evidently a wide-spread recognition that the 'blanket ban'

⁷²⁷ Transcript of representations made on Tuesday 18 January 2011, published 8 February 2011:

<<http://www.publications.parliament.uk/pa/cm201011/cmselect/cmbackben/cbbc1801/cbbc1801.htm>>

⁷²⁸ HC Deb 11 January 2011, vol 521, cols 1-24 WH (led by Philip Hollobone MP)

⁷²⁹ At para 79

⁷³⁰ 18 January 2011, Representations, David Davis Q3

⁷³¹ Discussed elsewhere at points throughout

⁷³² 18 January 2011, Representations Q9 – 'We have to be careful that the Backbench Business Committee doesn't start scheduling business that is only embarrassing to Government'

⁷³³ With Rt Hon Lord Mackay of Clashfern (Lord Chancellor, 1987-97), Dr Eric Metcalfe, Human Rights Policy Director, JUSTICE and Aidan O'Neill QC, 'a leading human rights lawyer...with expertise in prisoners' rights issues', on Tuesday 1 February 2011, Ev 1

⁷³⁴ PCRC, *Voting by convicted prisoners: summary of evidence* (HC 2010-12, 776)

⁷³⁵ *ibid* 1

⁷³⁶ PCRC, *Voting by convicted prisoners*, Fifth Report of Session 2010–11 Vol II: *Additional Written Evidence*

imposed by the UK was unlawful under the ECHR and it clarified that it was the indiscriminatory nature of the ban on convicted prisoners voting which was problematic, rather than that it not be permitted to impose *any* restrictions on voting by prisoners.

The apparent strength of public opinion against enfranchising convicted prisoners was noted in the evidence heard by the Committee and it was plainly acknowledged that it was likely such opinion would be reflected in the discussion in the House of Commons.⁷³⁷ This reflected the intention of those MPs who proposed the backbench debate, in the words of Jack Straw: 'We have framed the motion in a way that is respectful of our Treaty obligations, but which gives Parliament, the elected House, an opportunity outside legislation - that is really important - to set down its opinions in a safe way'.⁷³⁸ The motion, which supported the continuation of the current ban, was agreed on a division by 234 to 22. The numbers may have been higher had the front-benchers agreed not to vote, this being a debate on a backbench motion which provided 'an opportunity for the Government to take the temperature of the House without the intervention of a Whip'.⁷³⁹

The Committee achieved its objective, of gathering (and publishing) expert evidence on the legal position and thereby making a positive contribution to the House of Commons in its deliberations. The PCRC's concise Report concluded, with more than a nod to public feeling, that 'however morally justifiable it might be, this current situation is illegal under international law founded on the UK's Treaty obligations'.⁷⁴⁰ During the six-hour debate in the Commons, the PCRC's work was referenced on seven occasions.⁷⁴¹ The relevant House of Commons Library Notes also refer to the contribution made by the PCRC in taking evidence and producing a Report.⁷⁴² The evidence session which the Committee held with legal experts was discussed soon afterwards by a number of the broadsheet newspapers, including *The*

⁷³⁷ PCRC, *Voting by convicted prisoners: summary of evidence* (HC 2010-12, 776) 20

⁷³⁸ 18 January 2011, Representations, Jack Straw Q3

⁷³⁹ HC Deb 10 February 2011, vol 523, col 526

⁷⁴⁰ PCRC, *Voting by convicted prisoners: summary of evidence* (HC 2010-12, 776) 22

⁷⁴¹ For a brief academic summary of the debate see Danny Nicol, 'Legitimacy of the Commons debate on prisoner voting' [2011] Public Law 681

⁷⁴² House of Commons Library SN/PC/01764, 'Prisoners Voting Rights' at pp 36-7, (4 July 2012, updated 4 July 2013) 17; House of Commons Briefing Paper CBP 7461, 'Prisoners Voting Rights: developments since May 2015' (15 February 2016)

*Daily Telegraph*⁷⁴³ and *The Guardian*⁷⁴⁴ and also by the BBC.⁷⁴⁵ Several months later, following the European Court of Human Rights (ECtHR) judgement in *Scoppola v Italy (No 3)*⁷⁴⁶, *The Independent*⁷⁴⁷ picked up the story but referred only to comments made to the Commons by the Minister for Political and Constitutional Reform, Mark Harper, and not to the PCRC's contribution to the debate. Subsequent academic articles and discussion around the matter of prisoner voting also included reference to the work of the PCRC.⁷⁴⁸

The Government did not respond specifically to the Committee's Report but a Draft Bill – the *Voting Eligibility (Prisoners) Bill* – was published in the following Parliamentary session.⁷⁴⁹ In March 2012, the Justice Secretary explained '[T]he issue is...still under legal review, little progress has been made to date'⁷⁵⁰ which presumably is the excuse behind the lack of a prompt Government Response to the PCRC Report.

Shortly after the Parliamentary debate, the *Greens and MT* judgement was referred to the Grand Chamber of the ECtHR.⁷⁵¹ The request for an appeal hearing was dismissed and the Strasbourg Court gave the UK Government a deadline of six months⁷⁵² within which they must introduce legislative proposals. Meanwhile, an Italian case⁷⁵³ – bearing much similarity to *Greens* – was referred to the Grand Chamber and the UK was made a party to the case, as it had Europe-wide implications. The Attorney-General made representations on behalf of the British Government. As a result of this the Government requested, and was granted an extension (of six months from the date of the *Scoppola* judgment) to the deadline for implementing prisoner voting rights which had been set in *Greens*.

⁷⁴³ Rosa Prince, 'Electoral reform referendum could be illegal without prisoner votes', *Daily Telegraph* (1 February 2011)

⁷⁴⁴ Severin Carrell, 'Prisoners take coalition to European court over breach of voting rights', *Guardian.co.uk*, (1 February 2011)

⁷⁴⁵ BBC, 'Prisoner vote law 'covers Scotland and Welsh elections'' (1 February 2011)

⁷⁴⁶ [2012] ECHR 868

⁷⁴⁷ Geoff Meade, 'Europe: UK has six months to give prisoners the vote' *The Independent* (22 May 2012)

⁷⁴⁸ For example, see: CRG Murray, 'A Perfect Storm: Parliament and Prisoner Disenfranchisement' *Parliamentary Affairs* (2012) 1; and Steve Foster, 'The long and winding road: the battle for the prisoner's right to vote' *Coventry Law Journal* (2011) 16(1) 19

⁷⁴⁹ Published for pre-legislative scrutiny – by a specially convened Joint Committee – on 22 November 2012

⁷⁵⁰ HC Deb 13 March 2012, vol 452, col 136

⁷⁵¹ On 1 March 2011

⁷⁵² From 11 April 2011

⁷⁵³ *Scoppola (No 3)* [2012] ECHR 868

In October 2011, the DPM outlined the position to the House of Commons:

It is...right to consider the final *Scoppola* judgment and the wider legal context before setting out our next steps on prisoner voting. The Government will express their views on the principles raised in that case, and we will be arguing that it is for Parliament to decide the way forward on this issue.⁷⁵⁴

He further clarified, in response to questions in the Commons, that ‘the first point of principle...is precisely that it is this Parliament that should be able to determine matters such as this, and we will be arguing that...before the Court’ and that he did not support ‘votes for violent prisoners’.⁷⁵⁵ In May 2012 the Grand Chamber of the ECtHR confirmed in another landmark ruling in *Scoppola (No 3)*, that a general and automatic disenfranchisement of all serving prisoners was incompatible with Article 3 of Protocol No 1, but, in a summary of its judgement, the court accepted the [UK] government's argument that each state has a wide discretion as to how it regulates the ban both in terms of the type of offences covered and whether the matter should be defined in law or left for judges to decide.⁷⁵⁶ The UK then had six months to bring forward legislative proposals to amend the law and published, on 22 November 2012, a draft Bill⁷⁵⁷ which proposed three options: a ban for prisoners sentenced to four years or more; a ban for prisoners sentenced to more than six months; or a ban for all convicted prisoners – a restatement of the existing position. A Joint Committee of both Houses was appointed to carry out pre-legislative scrutiny of the draft legislation and was due to report in autumn 2013⁷⁵⁸ although this deadline was extended by subsequent motions in both Houses⁷⁵⁹ and ultimately the Joint Committee Report was published in December 2013.⁷⁶⁰ There was some heated discussion in the House of Commons over the role of the whips in selecting the Joint Committee members, with some of the so-called ‘awkward squad’,⁷⁶¹ including Christopher Chope MP (notably a member of the PCRC) proposing the following amendment:

⁷⁵⁴ HC Deb 11 October 2011, vol 533, col 164

⁷⁵⁵ HC Deb 11 October 2011, vol 533, col 164

⁷⁵⁶ *Scoppola (No 3)* [2012] ECHR 868 (22 May 2012)

⁷⁵⁷ *Voting Eligibility (Prisoners) Draft Bill* (Cmnd 8499, November 2012)

⁷⁵⁸ By 31 October 2013

⁷⁵⁹ HC Deb 9 October 2013, vol 568, col 269; HL Deb 10 October 2013, vol 748, col 182

⁷⁶⁰ Joint Committee on the Draft Voting Eligibility (Prisoners) Bill, *Draft Voting Eligibility (Prisoners) Bill* (2013-14, HL 103, HC 924)

⁷⁶¹ BBC, ‘Tory Manoeuvrings’ (5 March 2013)

That the membership of the Committee shall be nominated by the Committee of Selection under Standing Order No. 121 following elections within the parties using whatever democratic and transparent method they choose [rather than accepting the names put forward by the party whips].⁷⁶²

This reflected a concern, ‘that the Select Committee on Justice undertook an informal bidding process, making representations to the effect that it wanted one of its number to serve on the Joint Committee’ which ‘seems...to be a totally non-transparent way of dealing with such issues and it is not appropriate that we should set a precedent whereby a Select Committee can start to lobby the Government *covertly* to have one of its members as a member of a Joint Committee when that Select Committee is *not the lead Committee* [rather the PCRC was]. The Political and Constitutional Reform Committee has taken evidence on this subject from the Deputy Prime Minister and others, and if we are to give somebody from a Select Committee a place, we have not necessary chosen the right one.’⁷⁶³

The Liaison Committee later voiced a similar concern:

‘We have no doubt that it sometimes suits the Government for draft bills to be scrutinised by a joint committee which is nominated by the party whips, rather than by a departmental select committee whose members and chair are elected. If a joint committee is established to scrutinise a draft bill, we think it is important that the relevant departmental select committee should have the opportunity to nominate some of its own members to serve on the joint committee’.⁷⁶⁴

Either way, with the substantial Opposition support for the motion which existed, Chope’s amendment was negated and the motion agreed without a division.⁷⁶⁵

⁷⁶² HC Deb 16 April 2013, vol 561, col 298

⁷⁶³ HC Deb 16 April 2013, vol 561, col 300 [emphasis added]

⁷⁶⁴ Liaison Committee, *Select committee effectiveness, resources and powers*, (HC 2012–13, 697) 39 [Incorporating HC 1844-i, Session 2010–12]; Liaison Committee, *Formal Minutes*, Session 2012-13, 17 May 2012

⁷⁶⁵ HC Deb 16 April 2013, vol 561, col 303

C. Reform of the House of Lords⁷⁶⁶

In early spring 2011, the PCRC organised a seminar on reform of the House of Lords.⁷⁶⁷ This was attended by Parliamentarians and others with relevant experience and expertise.⁷⁶⁸ A further, more extensive, inquiry was later undertaken and a second Report published in 2013.⁷⁶⁹ Taken together these provide a clear example of proactive work on the part of the Committee to gather and disseminate information on a constitutional matter of importance and crucially to attempt to identify which reforms ‘would be likely to command a consensus’. The Committee’s objective in producing its first Report on Lords Reform was to ‘identify those points on which there was general consensus at our seminar, and to bring them to the attention of the House *before* the Government publishes specific proposals for reform of the House of Lords’.⁷⁷⁰ They explicitly clarified that it was ‘not an attempt to hold up the Government’s programme’⁷⁷¹ as at the time of publication, the Government proposals, in the form of a draft Bill for pre-legislative scrutiny, were expected within a matter of weeks as per the Cabinet Office Business Plan.⁷⁷²

In due course, it became clear that large-scale reform of the second chamber was unlikely to occur in the short (or medium) term⁷⁷³ and the Committee held a subsequent inquiry intended to ‘take the temperature on House of Lords Reform’ and to identify where agreement and consensus existed on ‘smaller-scale changes to the membership and structure of the House of Lords’⁷⁷⁴. As the Chair explained, ‘[W]hether or not we get radical Lords reform, there are

⁷⁶⁶ PCRC, *Seminar on the House of Lords: Outcomes* (HC 2010–12, 961); PCRC, *House of Lords reform: what next* (HC 2013–14, 251); PCRC, *House of Lords reform: what next? Government Response to the Committee’s Ninth Report of Session 2013–14* (HC 2013–14, 1079); Much has been written on reform of the Upper Chamber generally and the Joint Committee specifically which will not be discussed here; the remit of this study is limited to considering the role of the PCRC in this regard.

⁷⁶⁷ Held under Chatham House rules; ‘When a meeting, or part thereof, is held under the Chatham House Rule, participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed’: <<http://www.chathamhouse.org/about-us/chathamhouserule>>

⁷⁶⁸ See PCRC, *Seminar on the House of Lords: Outcomes*, (HC 2010–12, 961) 1; also PCRC News Release, ‘Stop-gap Lords reform needed now, says Committee’ (11 May 2011)

⁷⁶⁹ Political and Constitutional Reform Committee, *House of Lords reform: what next* (HC 2013–14, 251) 7

⁷⁷⁰ PCRC, *Seminar on the House of Lords: Outcomes* (HC 2010–12, 961) 1 [emphasis added]

⁷⁷¹ *ibid* 4

⁷⁷² Cabinet Office, *Business Plan 2011–15* (November 2010) p20; PCRC News Release, ‘Seminar on the House of Lords: Outcomes’ (5 May 2011)

⁷⁷³ Discussed below – withdrawal of *House of Lords Bill 2012*

⁷⁷⁴ PCRC, *House of Lords reform: what next* (HC 2013–14, 251) 7

changes here that need to be made now, if Parliament is to function effectively over the next few years.⁷⁷⁵ Despite the Government stating in its response to the second PCRC Report that it remained 'committed to the pursuit of wide scale, comprehensive reform' it acknowledged that '[I]n the absence of wider reform, however, the Government is keen to support straightforward and common sense changes'.⁷⁷⁶

The Committee's conclusions, and the consensus it managed to identify, recommended 'incremental, urgent reforms that would improve the functioning of the existing House of Lords' and, of these, the most obvious was the need to address the size of the upper chamber.⁷⁷⁷ The Committee, recognising that that (largely unsuccessful) proposals for 'radical reform' of the Lords had been attempted by successive Governments over many decades, was strident in suggesting that that the Government would need to ensure that, in the case of the large scale reform failing, 'the country is not left with a bloated, dysfunctional upper House'.⁷⁷⁸ Incremental reforms to the Second Chamber have been the norm rather the exception over the past century, at least. As Russell explains even if, at the time, these changes seemed 'small and inadequate, in retrospect such changes were important'. Russell also notes that the PCRC 'recognised this truth, and backed the provisions in the Byles bill as sensible'⁷⁷⁹

4. The Role and Influence of the PCRC

The first Report on Lords Reform made a number of specific recommendations, directly addressed to the Government in relation to what it phrased as the 'practicalities of scrutiny' in relation to the Joint Committee⁷⁸⁰ which was being established to consider the forthcoming

⁷⁷⁵ PCRC News Release, 'Stop-gap Lords reform needed now, says Committee' (10 May 2011)

⁷⁷⁶ PCRC, *House of Lord reform: what next? Government Response to the Committee's Ninth Report of Session 2013-14* (HC 2013–14, 1079) 2-3

⁷⁷⁷ PCRC, *Seminar on the House of Lords: Outcomes* (HC 2010–12, 961) 5

⁷⁷⁸ *ibid* 6

⁷⁷⁹ Meg Russell, 'The Byles bill on Lords reform is important: but needs amending if it's not to damage the Lords' (Constitution Unit, UCL, 13 February 2014)

⁷⁸⁰ The Joint Committee on the Draft House of Lords Reform Bill was appointed by the House of Commons on 23 June 2011 and by the House of Lords on 6 July 2011 to examine the *Draft House of Lords Reform Bill* and report to both Houses by 27 March 2012.

draft Bill.⁷⁸¹ These are set out below along with the outcome, and the extent to which this could be considered to be in line with the Committee recommendation.

4.1. Joint Committee Membership and Relationship with the PCRC

The PCRC recommended that the Joint Committee should not be so large as to be 'unwieldy'⁷⁸² and that it needed 'to be given a role in determining its membership'⁷⁸³ The Joint Committee had 26 members: 13 from the Commons and 13 from the Lords. In terms of size this could not be claimed as a success by the PCRC. A committee composed of 26 members is likely to be difficult to manage and thus potentially 'unwieldy', indeed, it might be argued that this contributed to the Joint Committee's inability to reach consensus. The result of this disagreement was the unusual step taken by a cross-party group of 12 members of the Committee (three MPs, including Laing also a member of the PCRC, and nine Peers) to publish an 'Alternative Report' on the same day as the official Joint Committee Report.⁷⁸⁴ This unofficial 'minority report' argued that 'that the proposals in the Draft Bill were insufficient to prevent a challenge from a reformed second chamber to the primacy of the House of Commons'⁷⁸⁵ and that the Government's proposals would lead to a rise in the cost of the second chamber.'⁷⁸⁶ In the 'Alternative Report' members suggested that there was 'an unbridgeable gap between the continuing primacy of the House of Commons and the Government's proposals for the establishment of an elected House of Lords'.⁷⁸⁷

In terms of the role of the PCRC and the membership of the Joint Committee, the PCRC had 'written to the Leader of the House proposing that we (or some of us...) should be the Commons Members of the Joint Committee'.⁷⁸⁸ The reasoning behind this recommendation

⁷⁸¹ *Draft House of Lords Reform Bill* (Cmnd 8077)

⁷⁸² PCRC, *Seminar on the House of Lords: Outcomes* (HC 2010–12, 961) 13

⁷⁸³ This was limited and qualified slightly by the extended recommendation: 'We need at least to be given a role in determining the membership of the Commons part of the Joint Committee.' PCRC (HC 2010–12, 961) 14

⁷⁸⁴ *House of Lords Reform: an Alternative Way Forward*, a Report by members of the Joint Committee of both Houses of Parliament on the Government's Draft House of Lords Reform Bill (April 2012)

⁷⁸⁵ There was particular concern regarding the 'inadequacy' of clause 2 of the draft Bill – discussed below

⁷⁸⁶ Discussed in House of Lords Library LLN 2012/015, *Joint Committee Report on the Draft House of Lords Reform Bill: Reaction* (27 April 2012)

⁷⁸⁷ *House of Lords Reform: an Alternative Way Forward*, 3.4, p34

⁷⁸⁸ PCRC, *Seminar on the House of Lords: Outcomes* (HC 2010–12, 961) 14

was logical, the members of the PCRC have a specific democratic mandate to perform this function, in that they have been elected by their parties to scrutinise the Government's programme of political and constitutional reform. The motion to approve the House of Lords component of the membership of the Joint Committee came before the House on Wednesday 6 July 2011.⁷⁸⁹ The standard procedure being that the party whips would select the members to sit on such a Joint Committee.⁷⁹⁰ There was some overlap in membership between the PCRC and the Joint Committee established to examine the Draft House of Lords Reform Bill; a Conservative member, Eleanor Laing (de facto PCRC Deputy Chair), and a Labour MP, Tristram Hunt, were appointed to the Joint Committee. According to one of those involved, 'the inclusion of members of the PCRC on the Joint Committee provided an opportunity for the valuable research undertaken by the PCRC to feed in to the Joint Committee's work'.⁷⁹¹ In addition, the Joint Committee on the draft House of Lords Reform Bill took evidence from Allen, albeit not in his role as Chair of the PCRC. Allen made it clear during his attendance that he was there in a personal capacity to share his views rather than on behalf of the PCRC, although it is, of course, highly plausible that his role as Chair of the PCRC and the primary research undertaken by the Committee will have helped to inform his personal views⁷⁹² and, perhaps, in a similar manner Allen's personal experiences have informed and influenced the PCRC.⁷⁹³

In addition to the inclusion of two of its members on the Joint Committee, the PCRC's recommendation 'that the Government proceed with these [small scale] provisions in the interim' was 'endorsed' as 'one area where consensus may be found' in evidence submitted to the Joint Committee by the Campaign for an Effective Second Chamber.⁷⁹⁴ Another PCRC recommendation was that the Joint Committee should have 'substantially more than the standard twelve weeks to carry out its scrutiny of the draft bill'.⁷⁹⁵ Originally the Joint

⁷⁸⁹ HC Deb, 6 July 2011, vol 729, col 256

⁷⁹⁰ Despite the reforms enacted following the Wright Report the role of the Whips is still strong in relation to Joint Committees, where they still choose the members.

⁷⁹¹ Private Interview with Eleanor Laing

⁷⁹² Evidence to Joint Committee, Monday 23 January 2012, Q639, p385, HC 1313

⁷⁹³ Discussed elsewhere

⁷⁹⁴ p376 Vol II – submitted 1 November 2011; Lord Cormack, Chairman of the Campaign for an Effective Second Chamber, gave evidence (on 4 July 2013) to the PCRC's later inquiry into small-scale reforms of the House of Lords (HC 251-iv)

⁷⁹⁵ PCRC, *Seminar on the House of Lords: Outcomes* (HC 2010–12, 961) 16

Committee, which began work on 11 July 2011, was expected to report on the draft Bill 'early next year' (by 29 February 2012)⁷⁹⁶ but a later date was agreed by both Houses following a motion in the Lords instructing the Joint Committee that it should report by 27 March 2012.⁷⁹⁷ The Joint Committee reported on 26 March 2012, after eight months of work.⁷⁹⁸

4.2. Substantive Conclusions and Recommendations

Through its inquiries, the PCRC identified a consensus on immediate concerns relating to the ever-increasing size of the second Chamber, concluding that this 'pressing issue' could not wait four years to be resolved.⁷⁹⁹ Such concerns were exacerbated with the advent of Coalition Government, in part due to the agreement between the governing parties that 'Lords appointments will be made with the objective of creating a second chamber that is reflective of the share of the vote secured by the political parties in the last general election'.⁸⁰⁰ Around the time the PCRC was working on this it was reported that the House of Lords now had more members than at any time since most of hereditary peers were removed in 1999.⁸⁰¹ In its second Report on Lords Reform, various incremental reforms to reduce the size of the Lords were discussed and received varying levels of support, from witnesses and ultimately from Government. The evidence received by the PCRC demonstrated unanimous support for one particular proposal upon which there was 'clear consensus'; the possibility of expulsion for peers who have been convicted of a serious offence. Other measures to address the size of the second chamber included no longer replacing hereditary peers when they die, removing persistent non-attendees, a moratorium on new peers, fixed-term appointments for new peers and the possibility of retirement, whether through voluntary mechanism or the introduction of a 'retirement age'. The Committee established that 'substantial support' existed, amongst those attending its seminar, for a mechanism which would allow Peers to resign. The PCRC also examined the question of creating a Statutory Appointments

⁷⁹⁶ Cited in Appendix 2: Call for Evidence, Joint Committee Report Vol I (HL 284-I, HC 1313-I)

⁷⁹⁷ Motion moved by Lord Strathclyde, Leader of the House of Lords (HL Deb 20 Dec 2011, vol 733, col 1685): See also HC Deb, 12 Jan 2012, vol 734, col 442 (the Commons concurred with the Lords motion).

⁷⁹⁸ Joint Committee on the Draft House of Lords Reform Bill, *Draft House of Lords Reform Bill* (2010-12, HL 284-I, HC 1313-I)

⁷⁹⁹ PCRC, *Seminar on the House of Lords: Outcomes* (HC 2010-12, 961) 8

⁸⁰⁰ HMG, *The Coalition: our programme for government* (May 2010) 27

⁸⁰¹ Christopher Hope, 'Calls to make peers retire to cut 'indefensible' size of House of Lords' *Daily Telegraph* (1 August 2013)

Commission. Finally it ‘urged’ the party groups ‘to engage in dialogue with a view to reaching agreement on the next step forward’.⁸⁰² The Committee had, in its earlier Report, voiced its concern in relation to the ‘current, effectively untrammelled, process for making party-political appointments to the House of Lords, coupled with the lack of any mechanism for Members to leave the upper House, threatens that House’s effective functioning in the shorter term’.⁸⁰³

5. The Draft Bill and White Paper

The DPM made a statement regarding the publication of a draft Bill and White Paper on reform of the House of Lords and the appointment of the Joint Committee in the Commons, in which he said:

In the *Programme for Government* we undertook ‘to establish a committee to bring forward proposals for a wholly or mainly elected upper chamber on the basis of proportional representation’. I chaired that cross-party committee⁸⁰⁴ and we reached agreement on many of the most important issues; not all, but good progress was made, and those deliberations have greatly shaped the proposals published today.⁸⁰⁵

Three members of the Committee – spoke during the Commons debate introducing the draft Bill in May 2011.⁸⁰⁶ Other Select Committee activity included the review by the Lords Constitution Committee, as per its terms of reference to review legislation for constitutional implications, which concluded that whilst it was ‘clearly a measure of constitutional reform’ in the Committee’s view it raised ‘no problems of constitutional concern’.⁸⁰⁷

In the Report produced as a result of the seminar, the PCRC categorised its recommendations; one of these categories was ‘principles for scrutiny of the Government’s proposals’ and it included the following: that ‘[M]embership of the House of Lords needs

⁸⁰² PCRC, *House of Lords reform: what next* (HC 2013-14, 251) 81

⁸⁰³ PCRC, *Seminar on the House of Lords: Outcomes* (HC 2010-12, 961) 7-8

⁸⁰⁴ Which met seven times between June and December 2010 – see foreword to the White Paper, Cmnd 8077

⁸⁰⁵ Cabinet Office, ‘Deputy Prime Minister’s oral statement on Lords reform’ (11 April 2013)

⁸⁰⁶ HC Deb, 17 May 2011, vol 528, cols 155-175;

⁸⁰⁷ Constitution Committee, *House of Lords Reform (No. 2) Bill* (HL 2013-14, 155) 14

to be considered in the context of its intended functions’;⁸⁰⁸ and that ‘the existing conventions governing relations between the two Houses will not survive in their current form if the upper House is given democratic legitimacy, and the Government’s proposals need to be examined with this in mind.’⁸⁰⁹ Yet, if one looks to the White Paper the Government’s suggestion that the functions of House of Lords should remain unchanged does little to address the importance of the overall context in which a radically reformed House of Lords would function.⁸¹⁰ Rather curiously, and controversially, the Government proposals indicated a lack of understanding with regards the result of proposed reform on the ‘delicate balance’ of power between the two Chambers.⁸¹¹ The White Paper indicated that the existing constitutional relationship and conventions should remain unchanged and clause 2 of the Bill was drafted to reflect this.⁸¹² The Joint Committee Report on the draft Bill recognised, however, that that this would not in itself be sufficient to maintain the primacy of the Commons.

The draft Bill proposed a much smaller House, of approximately 450 peers, and contained detailed arrangements for dealing with the ‘transitional period’.⁸¹³ The White Paper proposed that there should be no further by-elections for hereditary peers after the start of the transitional period and, as such the draft Bill would have repealed the *House of Lords Act 1999*.⁸¹⁴ The right of a Peer to resign, by giving written notice to the Clerk of Parliaments, was also included in the Government’s proposals.⁸¹⁵ These proposals which aimed to reduce the size of the House of Lords reflected the consensus reached in the PCRC’s Report, particularly in terms of acknowledging the need to reduce the membership and introducing a mechanism for resignation. At this stage, however, the Government failed to address the immediacy of

⁸⁰⁸ PCRC, *Seminar on the House of Lords: Outcomes* (HC 2010–12, 961) 10

⁸⁰⁹ *ibid* 11

⁸¹⁰ *Draft House of Lords Reform Bill* (Cm 8077) paras 2-6

⁸¹¹ *Ibid* para 9

⁸¹² s.2(1) Nothing in the provisions of this Act about the membership of the House of Lords, or in any other provision of this Act—(a) affects the status of the House of Lords as one of the two Houses of Parliament, (b) affects the primacy of the House of Commons, or (c) otherwise affects the powers, rights, privileges or jurisdiction of either House of Parliament, or the conventions governing the relationship between the two Houses.

⁸¹³ See Schedule 6

⁸¹⁴ Para 89, Proposals, White Paper, draft House of Lords Reform Bill and s.57 of the draft Bill; For Repeal of *House of Lords Act* see Schedule 8, s.19 of the draft Bill

⁸¹⁵ Paras 134-137, Proposals, White Paper, *draft House of Lords Reform Bill*

the concerns expressed by the Committee: those aspects that need to be addressed in the short-term.

6. Progress of the House of Lords Reform Bill

The Government's *House of Lords Reform Bill* met a fairly hasty demise; after receiving its Second Reading in July 2012, on 6 August the DPM made a statement to 'confirm...that we [the Government] do not intend to proceed with the Bill in this parliament'⁸¹⁶ and the Bill was withdrawn in September.⁸¹⁷

This led to heightened tensions between the Coalition parties, as in a very 'political' move, the DPM, as leader of the junior partner in the Coalition, ostensibly chose to intertwine the House of Lords Reform with the Boundary Changes (which were expected to be introduced following the passing of the *Parliamentary Voting System and Constituencies Act 2011*) and thus to block the, already agreed, boundary changes as retaliation for failed House of Lords reform.⁸¹⁸ Clegg explicitly stated 'I have told the Prime Minister that when, in due course, parliament votes on boundary changes for the 2015 election I will be instructing my party to oppose them'.⁸¹⁹ The politics behind these matters are not for this study, however, one element is particularly relevant and demonstrates the ability of a Select Committee, in this case the PCRC, to rigorously question a senior Government Minister and openly highlight what was, at best, a discrepancy between statements made. The DPM's claim that 'an elected House of Lords was part of the Coalition Agreement: a fundamental part of the contract that keeps the coalition parties working together in the national interest. A contract not just to each other, but a set of commitments we have made, collectively, to the British people'⁸²⁰ was rather disingenuous. In fact the coalition agreement (as published) made a commitment

⁸¹⁶ Cabinet Office, 'Deputy Prime Minister's statement on the House of Lords Reform Bill' (6 August 2012)

⁸¹⁷ See House of Commons Library SN/PC/06405, *House of Lords Reform Bill 2012-13: decision not to proceed* (9 August 2012)

⁸¹⁸ A significant number of Conservative MPs had voted against the Bill at second reading

⁸¹⁹ BBC, 'House of Lords reform: Nick Clegg's statement in full' (6 August 2012) - this section was removed as 'party political content' from the statement on the official Government website

⁸²⁰ BBC, 'House of Lords reform: Nick Clegg's statement in full' (6 August 2012)

to 'establish a committee to bring forward proposals' [on House of Lords Reform]⁸²¹ which had indeed happened.

The following day the *Financial Times* noted that Clegg's 'recent comments'⁸²² directly undermined the argument he had made in relation to the boundary reviews, as set out in oral evidence to the PCRC earlier that year.⁸²³ The *Daily Mail* also picked up on this inconsistency and referred to Eleanor Laing's questioning of Clegg in April's meeting of the 'Commons Political Constitutional and Reform committee'⁸²⁴ where the following question had been directly posed: 'It is now being reported that the Liberal Democrat party, as part of the coalition, will not continue to support the boundaries legislation unless House of Lords reform is passed in the House of Commons and the House of Lords. Is that the case?'⁸²⁵ To which, the DPM replied:

It just does not work like that. There is no sort of "You do this. I'll do that. You do this. I'll do that". One just has to look at each of these things on their own merits and in their own terms...I have said that I do not recognise this idea that there are links between one bit of what is actually, as I have described earlier, quite a long list of constitutional political changes we are making, and another. We are trying to press forward on all of them...

When pressed further he repeatedly stated that 'there is *no formal link between the two*' and '*there is no reliance on our support for a Coalition Agreement commitment for progress on*

⁸²¹ HMG, *The Coalition: Our Programme for Government* (May 2010) 27

⁸²² 'Lords reform and boundaries are two, separate parliamentary bills but they are both part of a package of overall political reform. Delivering one but not the other would create an imbalance – not just in the Coalition Agreement, but also in our political system.

Lords reform leads to a smaller, more legitimate House of Lords. Boundary changes lead to a smaller House of Commons, by cutting the number of MPs. If you cut the number of MPs without enhancing the legitimacy and effectiveness of the Lords all you have done is weaken parliament as a whole, strengthen the executive and its overmighty government that wins.'

⁸²³ Kiran Stacey, FT Westminster Blog (7 August 2012) <<http://blogs.ft.com/westminster/2012/08/clegg-undermines-his-own-boundary-reform-argument/#ixzz22xleNHIQ>>

⁸²⁴ Andrew Pierce, 'Broken promises', and how Calamity Clegg became Mr Forgetful' *Daily Mail* (12 August 2012)

⁸²⁵ PCRC, *The Coalition Government's programme of political and constitutional reform* oral and written evidence (HC 2010-12, 178) Q177

unrelated or other significant parallel constitutional formations. I have said that. There is no link; of course, there is no link'.⁸²⁶

The same point was reiterated by the DPM during an oral evidence session with the Joint Committee on the draft Bill, in response to a question from Tristram Hunt (member of both the PCRC and the Joint Committee): 'Lord Rennard, the former chief executive of the Liberal Democrats, explicitly links support for reform of the House of Lords to Liberal Democrat support for the boundary review. Is there any basis to that suggestion?' To which Clegg continued to insist:

Of course there is *no formal link* between those different elements of the constitutional and political reform agenda that this Government are pursuing. There are various different facets of it.... There are various bits that make up the mosaic of this Government's political and constitutional reform agenda. I think they all hang together in a coherent way, but *there is not a quid pro quo about one aspect as opposed to another*.⁸²⁷

The Committee had another opportunity to raise this 'inconsistency' at a later oral evidence session with the DPM and the Minister for Political and Constitutional Reform, then Chloe Smith MP, at which Clegg denied he had been dishonest and insisted that he was simply referring to a 'formal legal link' between the policies which had not existed in the past nor at that time.⁸²⁸ The distinction the DPM attempted to draw between links and formal legal links appeared somewhat misleading but the Committee, sensibly realising no further progress would be made on that point, moved on to the rest of its agenda.

Thus whilst this is an interesting example of a tenacious Committee and further highlights how media attention and Parliamentary scrutiny can align on an issue, from a wider

⁸²⁶ PCRC, *The Coalition Government's programme of political and constitutional reform* oral and written evidence (HC 178, incorporating HC 358-ii, Session 2010-12) Qs 177-179 – Eleanor Laing and Nick Clegg, Ev 44 [emphasis added]

⁸²⁷ Joint Committee on the Draft House of Lords Reform Bill, *Draft House of Lords Reform Bill* (2010-12, HL 284-II, HC 1313-II) Q714 p434

⁸²⁸ PCRC, *The Coalition Government's programme of political and constitutional reform* (HC 834-i) Q10 -13,

perspective this matter is emblematic of the difficulty in bringing about large scale constitutional reform without a solid base of support and general consensus. It was made clear in relation to the *House of Lords Reform Bill* that a significant number of backbenchers in the Government ranks and the Labour leadership were intent on blocking the legislation, not to mention the inevitable difficulty in progressing a Bill through the Lords itself.⁸²⁹

7. Further Developments

7.1. Private Members Bills

The next Parliamentary session saw the introduction of a Private Member's Bill - the *House of Lords (Cessation of Membership) Bill [HL] 2012-13*⁸³⁰ - which provided for a mechanism by which Peers could retire, an idea which the PCRC discovered had a high level of support. Lord Steel's Bill provided for long-term non-attendees in the Lords to be deemed to have taken a leave of absence and had, in Professor Peter Hennessy's words, a 'humane approach to the remaining hereditaries'⁸³¹ in that as they die they would not be replaced by election (as they currently are). Lord Steel's Bill completed its Lords stages on 24 July 2012 and was introduced in the Commons but progressed no further.

Following the failure of the Government's draft Bill, the lack of progress of the related backbench proposals including, in addition to Lord Steel's Bill, the *House of Lords Reform Bill [HL] 2013-14*, introduced by Baroness Hayman,⁸³² and a lack of consensus on the wholesale reform of the House of Lords, the PCRC launched a further Inquiry in January 2013. This was an interesting project in that, as noted above, its aims were to inquire into 'what smaller-scale changes to the membership and structure of the House of Lords would be likely to command a consensus.'⁸³³ The pragmatic approach adopted by the PCRC towards finding solutions, rather than merely identifying problems, was especially evident in this secondary inquiry. It

⁸²⁹ Referenced by Clegg in his statement on 6 August 2012 where he suggested that whilst Labour supported reform 'in principle' they were 'set on blocking it in practice'.

⁸³⁰ 'A Bill to make provision for Peers to cease to be Members of the House of Lords by way of retirement or in the event of non-attendance or criminal conviction' HL Bill 21

⁸³¹ Peter Hennessy, 'Don't lay waste to the wisdom of the Lords', *Daily Telegraph* (17 May 2011)

⁸³² HL Bill 23

⁸³³ PCRC, *House of Lords reform: what next* (HC 2013-14, 251) 7

was further reinforced by the Committee's intention to avoid unnecessarily duplication in what the Chair described as a 'very highly focused inquiry'⁸³⁴ by avoiding discussion of 'general issues that have been examined in other fora' and looking at possible immediate and short-term changes that may not require legislation.⁸³⁵ Support for such a task comes from a wide range of quarters and to those who suggested that there is no need for a 'stand-alone Bill on Lords Reform' because the 'real reform' has not made progress Lord Steel described this as 'a total non-sequitur'.⁸³⁶ Furthermore, it provides another example of effective 'follow-up' by the PCRC and demonstrable commitment to the pursuit of satisfactory conclusions – in this instance trying to urge action on the less controversial elements of Lords reform, those which the Committee's earlier inquiry suggested received a measure of consensus and were described by some as 'housekeeping measures'.⁸³⁷ In due course, this might prove to be a particularly 'successful' part of the Committee's work as history indicates it is through incremental and small-scale changes that constitutional reforms, and more specifically reform to the Second Chamber, have occurred in the UK.

7.2. PCRC Follow-up Inquiry

The PCRC issued a call for written evidence⁸³⁸ and subsequently held four oral evidence sessions, between 6 June and 4 July 2013.⁸³⁹ There was significant focus on the technical detail of potential reforms in these evidence sessions; this was made possible by drawing upon the expertise and experience of the witnesses who ranged from the Clerk of the Parliaments, David Beamish (whose focus was on the workability of ideas) to several Peers who had been closely involved in previous attempts at reform but maintained a variety of opposing views. These ranged from Lord Richard who voiced strident opposition to minor and incremental changes to Lord Cormack who had great enthusiasm for the same, from Lord Steel to Baroness Hayman (both of whom have introduced Private Members' Bills to bring about changes to the

⁸³⁴ *ibid* Ev 13, Q63

⁸³⁵ *ibid* Ev 40, Q162; Ev 44, Q187

⁸³⁶ *ibid* Ev 1, Q1

⁸³⁷ *ibid*

⁸³⁸ Deadline for submissions was 26 March 2013

⁸³⁹ Oral evidence sessions held on 6 June, 13 June, 27 June and 4 July 2013

House of Lords).⁸⁴⁰ Others brought experience of separate aspects of the inquiry and an understanding of what might be possible to achieve without legislation. Lord Goodlad, for example, has chaired a working group on Lords practices and procedures. The witnesses invited to appear before the Committee were well-chosen and provided the PCRC with extensive material to consider whilst drawing up its proposals in its Report. The Chair indicated that the PCRC Report would inform the progress of Byles' Bill.⁸⁴¹ The witnesses, from who the Committee took evidence, held views across a wide spectrum in terms of how 'urgent' the reforms being discussed were considered to be. For example, Lord Steel described the items on the Committee's agenda as 'urgently required... to make the upper House more effective than it is'⁸⁴² whereas others had suggested it was 'more a case of desirability than urgency'.⁸⁴³

The most useful aspect of this Inquiry was the evidence taken by the PCRC on potential mechanisms to reduce, or limit the growth of, the size of the House of Lords. On the issue of an effective retirement scheme for peers, statutory or otherwise, Baroness Hayman's input was of particular interest as it was her Bill (successful in the Lords) which proposed retirement (along with expulsion and non-attendance – other issues also being examined by the PCRC). There appeared to be almost universal agreement that a retirement scheme is 'essential',⁸⁴⁴ however, settling upon a retirement age met with greater discord. The Chairman of the Appointments Commission, for example, suggested that 'these days' it wasn't really appropriate to have a retirement age.⁸⁴⁵ Expulsion on the other hand does not appear to have been widely considered – perhaps because, unlike the House of Commons, it was not a power that the House of Lords possessed at the time. Although again, the witnesses were unanimous in agreeing that there ought to be the possibility to expel peers who have committed serious offences, whilst simultaneously acknowledging that this would have a negligible effect in terms of reducing the number of peers overall. The unanimous support

⁸⁴⁰ Lord Steel's Bill had been adopted in the Commons by Eleanor Laing until it fell at the end of the Session; Baroness Hayman's Bill was picked up in the Commons by Dan Byles (fifth in the ballot)

⁸⁴¹ PCRC, *House of Lords reform: what next* (HC 2013-14, 251) Ev 8, Q43; Subsequently the following report was published - PCRC, *House of Lords reform: what next* (HC 2013-14, 251)

⁸⁴² *ibid*, Ev 2, Q3

⁸⁴³ *ibid*, Q165

⁸⁴⁴ *ibid*, in Lord Steel's words, Q6

⁸⁴⁵ *ibid*, Q158

most of the measures in Lord Steel's Bill⁸⁴⁶ received in the Lords provided the Committee with a useful barometer of the consensus which existed in that quarter.

The Committee⁸⁴⁷ spent time questioning witnesses on whether they felt there should be a moratorium on new peers, at least until the next election. This was a somewhat redundant line of questioning and arguably a poor use of the limited time the Committee had with its witnesses, because, even if in due course the PCRC were to recommend this in its Report and then assuming the (unlikely event) of the Government having accepting this proposal, the likelihood is that the next election would have been less than 18 months away and thus in practical terms a moratorium would have made a minimal difference. That issue aside most of the witnesses were concerned about the longer-term sustainability of a moratorium as it would limit the introduction of 'fresh blood' into the House. Evidence from the Clerk of the Parliaments suggested that measures to remove non-attendees would have little practical impact, other than to increase the number of members on leave of absence but since these members did not attend prior to taking a leave of absence there would be little difference logistically and none financially.⁸⁴⁸ Incidentally, shortly after these evidence sessions, a number of new peers were created!

Of all such proposals on which the PCRC heard evidence the removal of the remaining hereditary peers seemed to be the least accepted, or acceptable. In large part this was due to the difficulty of getting agreement on statutory provisions covering this aspect in the House of Lords. Lord Richard's evidence provided an alternative view which appeared to indicate a somewhat *laissez faire* approach to the use of the Parliament Acts and minimal concern over the need for consensus.⁸⁴⁹ Lord Norton suggested that there is a majority, but not unanimity, on abolishing the hereditary peers by-elections.⁸⁵⁰

⁸⁴⁶ *House of Lords (Amendment) Bill* [HL] 2010-12

⁸⁴⁷ Or perhaps more specifically, one Committee member, namely Christopher Chope.

⁸⁴⁸ PCRC, *House of Lords reform: what next* (HC 2013-14, 251) Q179-181

⁸⁴⁹ *ibid* Q187

⁸⁵⁰ *ibid* Q66

There is certainly no doubt that as an overall conclusion to be drawn from the evidence, there was a general consensus that it would be beneficial and desirable to reduce the size of the House of Lords.⁸⁵¹

8. Conclusion - Impact and Contribution of the PCRC's Work

The Government's Response to the PCRC's secondary Report on House of Lords Reform was received after four months.⁸⁵² It stated that the Government had 'considered the Committee's recommendations carefully' and that it now supported 'those recommendations that are in line with the provisions contained within the *House of Lords Reform (No 2) Bill*'.⁸⁵³ The Committee's influence can be deemed a success in both a qualitative and quantitative sense – all but two of the Committee's recommendations and conclusions were accepted and supported in some measure, those that were rejected were in relation to ending the by-elections to replace the remaining hereditary peers and the proposal to put in a place a scheme under which nominees would be invited to give an assurance that they would retire after a certain number of years.⁸⁵⁴

In due course a number of the measures and mechanisms examined and proposed by the Committee were included in Dan Byles Private Member's Bill, which the Government supported. At Second Reading in the Commons the Minister of State at the Cabinet Office indicated that the Government were prepared to support the 'modest proposals' in the Bill.⁸⁵⁵ This was subsequently sponsored in the Lords, by Lord Steel, and received Royal Assent on 14 May 2014⁸⁵⁶ as the *House of Lords Reform Act 2014*.

⁸⁵¹ See, for example, response by Lords Norton, Tyler, Hennessey and Goodland, PCRC, *House of Lords reform: what next* (HC 2013-14, 251) Q67i

⁸⁵² PCRC, *House of Lord reform: what next? Government Response to the Committee's Ninth Report of Session 2013-14* (HC 2013-14, 1079)

⁸⁵³ Subsequently the *House of Lords Reform Act 2014*

⁸⁵⁴ PCRC, *House of Lord reform: what next? Government Response to the Committee's Ninth Report of Session 2013-14* (HC 2013-14, 1079) 7 and 13

⁸⁵⁵ HC Deb 19 November 2013, vol 568, col 1011

⁸⁵⁶ HL Deb 14 May 2014, vol 753, col 1920

The valuable role performed by the Committee in bringing together experts and proposing workable solutions, whilst not limiting the overall 'wider reform' to which the Government remained attached, was particularly meaningful as it enabled the Government (largely via its support of Byles' Private Member's Bill, and in its response to the PCRC) to accept and support workable, incremental measures of reform without explicitly rejecting its avowed longer-term intentions. A respected Parliamentary Select Committee is particularly well-placed to perform the function of inquiry and evidence compilation, as it has a good opportunity to access and engage with experts (whether they be academics, other Parliamentarians, public or private sector representatives) in a relatively non-partisan, neutral and generally non-combative atmosphere.⁸⁵⁷In the words of the Committee Chair: '[T]hese are the views of experts from all parties and none'.⁸⁵⁸One final tangible result of the Committee's work in this area was that it directly led to the opportunity for the PCRC to hold the pre-appointment hearing for the new Chair of Lords Appointment Commission in July 2013.⁸⁵⁹

⁸⁵⁷ A recent and notable exception to this usually congenial Committee atmosphere might be the questioning of witnesses at the Phone Hacking Inquiry carried out by the Culture, Media and Sport Select Committee

⁸⁵⁸ PCRC News Release, 'Stop-gap Lords reform needed now, says Committee' (10 May 2011)

⁸⁵⁹ PCRC, *Pre-appointment hearing: The Chair of the House of Lords Appointments Commission* (HC 2013-14, 600 vol I & II)

Chapter Six: The Political and Constitutional Reform Committee and Legislative Review

1. Introduction

Scrutiny of legislation at various stages has formed an important part of the Committee's work programme and in this respect, in particular, has led to overlap with the House of Lords Constitution Committee. The Constitution Committee's terms of reference specifically instruct it to review the 'constitutional implications of all public bills coming before the House'⁸⁶⁰ although it has been acknowledged, in a study of the Constitution Committee's work, that 'as one would expect from a Commons Select Committee, it [the PCRC] takes a different approach to its work'.⁸⁶¹

In terms of analysis, there are, at least, two aspects to the legislative review undertaken by the PCRC. First, 'traditional' scrutiny of Government legislation during the Parliamentary process (including scrutiny of draft Bills and post-legislative review),⁸⁶² it is in this respect that tangible influence is perhaps most easily measured, particularly in the short-term. Secondly, a wider approach was adopted in relation to scrutinising the *process and effectiveness* of legislation, demonstrable through an Inquiry into improving the quality of legislation,⁸⁶³ established at the request of the Liaison Committee, and, additionally, through the Committee's consideration of the matters around Queen's and Prince's consent.⁸⁶⁴

2. Treatment of 'Constitutional' Legislation in the Westminster Parliament

⁸⁶⁰ Constitution Committee, *Reviewing the Constitution: Terms of Reference and Method of Working* (HL 2001-2 11) 1

⁸⁶¹ Andrew Le Sueur and Jack Simson Caird, 'The Lords Constitution Committee' in Alexander Horne, Gavin Drewry and Dawn Oliver (eds), *Parliament and the Law* (Hart Publishing 2013) 289

⁸⁶² Examples include scrutiny of the *Fixed Term Parliaments Bill*, the *Parliamentary Voting and Constituencies Bill* and the *Recall of MPs Bill*, discussed in this chapter. In later years it undertook detailed, and highly critical, scrutiny of the *Lobbying Bill* (see chapter seven)

⁸⁶³ PCRC, *Ensuring standards in the quality of legislation* (HC 2013-14, 85)

⁸⁶⁴ PCRC, *Impact of Queen's and Prince's consent on the legislative process* (HC 2013-14, 784)

The approach taken by successive Governments towards constitutional reform has often been rather haphazard; consistency in terms of the treatment of ‘constitutional’ legislation during the legislative process is a result largely of convention and parliamentary practice. First, of course, there may be ‘definitional controversies’ in part due to the absence of a codified constitution in the United Kingdom and the corresponding absence of a ‘legally definable class of ‘constitutional’ legislation.’⁸⁶⁵ It would, however, be impossible to legitimately suggest that the legislation discussed here is anything other than of ‘first class constitutional importance’ and, as such, customarily has Committee Stage on the floor of the Commons, in a Committee of the whole House.⁸⁶⁶ The phrase ‘Bills of first class constitutional importance’ is credited with first appearing in a memo drafted by the Solicitor General, Sir David Maxwell-Fyfe, to the Procedure Committee sub-Committee on the Machinery of Government in the 1940s.⁸⁶⁷ It was suggested this would be applicable to legislation which would ‘make a material change in the working of the constitution’,⁸⁶⁸ such as the *Parliament Act 1911* and the *Statute of Westminster 1931*⁸⁶⁹ although Eden argued that this was ‘a very difficult definition to apply’.⁸⁷⁰ Evidence to the Procedure Committee was clear that it would not be appropriate for constitutionally significant matters to be committed to consideration by a Standing Committee or to ‘play about with the British Constitution in a Committee upstairs, to put it colloquially’.⁸⁷¹

⁸⁶⁵ House of Commons Library Research Paper 97/53, *The Commons committee stage of ‘constitutional’ bills*, (20 May 1997) 6-7

⁸⁶⁶ See Standing Order 63(2)(a); Erskine May (n45) 566; Griffith and Ryle (n17) 6-129

⁸⁶⁷ Machinery of Government Committee (44) 22, para 5 cited in House of Commons Library Research Paper 97/53, *The Commons committee stage of ‘constitutional’ bills*, (20 May 1997) 11

⁸⁶⁸ Procedure Committee (HC 1945-46, 9-I) p22, Q196

⁸⁶⁹ Procedure Committee (HC 1945-46, 9-I) Appendix, Government memorandum, 5

⁸⁷⁰ HC Deb, 15 November 1945, vol 415, col 2354

⁸⁷¹ Procedure Committee (HC 1945-46, 9-I) p22-3, Q198

A. Traditional Review of Legislation: The Political and Constitutional Reform Committee's First, Second and Third Reports

With the appointment of its initial members, the PCRC immediately commenced work scrutinising two constitutionally significant pieces of legislation: the *Fixed-Term Parliaments Bill (now Act) 2011*;⁸⁷² and the *Parliamentary Voting System and Constituencies Bill (now Act) 2011*.⁸⁷³ The first of these was 'a hugely significant constitutional innovation' whereby 'the timing of the next general election will not be a plaything for the Prime Minister'.⁸⁷⁴ The Committee's first inquiries were thus reactive, examining the Government's published legislative proposals on voting and parliamentary reform, and of a nature typically expected of a 'constitutional' Select Committee.⁸⁷⁵ The PCRC Inquiry into fixed-term Parliaments is discussed in this chapter as a means, through case study, to illustrate and identify the PCRC's working methods, impact and influence in the limited sphere of this legislation.

Despite repeated claims that 'the first two key measures'⁸⁷⁶ proposed by the Coalition Government were 'fundamental to this House and to our democracy'; the PCRC was tasked with examining them within the confines of an extremely limited period.⁸⁷⁷ The PCRC Chair described this as 'a travesty of the processes of this House'⁸⁷⁸ asserting that the Committees had been 'denied...any adequate opportunity to conduct this scrutiny'.⁸⁷⁹ Such early events did not augur well for the approach of the Coalition Government to constitutional reform, despite demonstrable consciousness of the ad hoc and, often, incoherent nature of the previous Government's programme of constitutional reform; with the hurried introduction of

⁸⁷² Received Royal Assent on 15 September 2011 and came into force on that day

⁸⁷³ Received Royal Assent on 16 February 2011

⁸⁷⁴ HC Deb 5 July 2010, vol 513, col 23

⁸⁷⁵ See, for example, the terms of reference of the House of Lords' Constitution Committee; the 'core tasks' (above); and also the Cabinet Office 'Guide to Making Legislation' cited below

⁸⁷⁶ DPM evidence session with PCRC (15 July 2010)

⁸⁷⁷ 'You wrote to me last week about the Parliamentary Voting System and Constituencies Bill, and the Fixed-term Parliaments Bill... this gives my committee a grand total of **two clear sitting days** in which to consider and take evidence on the bill before second reading. The time that we have to scrutinise the Fixed-term Parliaments Bill is only marginally less inadequate'. - Political and Constitutional Reform Committee, *Parliamentary Voting System and Constituencies Bill* Appendix 1: Letter from the Chair of the Committee to the Deputy Prime Minister 27 July 2010 (HC 2010-11, 422)

⁸⁷⁸ HC Deb 26 July 2010, vol 514, col 711

⁸⁷⁹ PCRC, *Parliamentary Voting System and Constituencies Bill* Appendix 1: Letter from the Chair of the Committee to the Deputy Prime Minister 27 July 2010 (HC 2010-11, 422)

key legislative measures it appeared the new Government might introduce constitutional reforms in a similarly injudicious manner. Perhaps, however, this was an accident of Coalition. In a later evidence session with Richard Heaton, First Parliamentary Counsel and Permanent Secretary at the Cabinet Office who suggested the haste behind the introduction of the Fixed-Term Parliaments legislation was for both 'operational' and 'political' reasons ... 'to do with cementing the coalition'; he explained that it 'was necessary for coalition purposes'.⁸⁸⁰ A (former) member of the Coalition Government discussed this matter explicitly and indicated that '[W]ithout a super-majority⁸⁸¹ for dissolution being required, the smaller party could leave the coalition and dissolve parliament almost at will'.⁸⁸²

1. An Accelerated Parliamentary Timetable

The Second Reading of the *Fixed-Term Parliaments Bill*⁸⁸³ occurred merely one week after that of the *Parliamentary Voting Systems and Constituencies Bill*.⁸⁸⁴ Committee stage was approximately 14 hours, over three days⁸⁸⁵ and Report Stage a further six hours.⁸⁸⁶ In relation to the *Parliamentary Voting Systems and Constituencies Bill*, at Second Reading, the House of Commons, voted for a Programme Motion which committed the Bill to be considered by a Committee of the Whole House and provided for five days of Committee Stage, by 324 votes to 272.⁸⁸⁷ The debate in Committee in the Commons was over 31 hours in length⁸⁸⁸ and Report stage was approximately ten hours.⁸⁸⁹ To set this in context, in a review of constitutionally significant legislation from 1945 to 1997, which identified 15 pieces of legislation which could

⁸⁸⁰ PCRC, *Ensuring standards in the quality of Legislation* (HC 2013-14, 85) Ev22 Q77

⁸⁸¹ Unusual in the context of the Westminster Parliament. This was the two-thirds majority of the House of Commons required to support an early General Election and the dissolution of Parliament. A clause which was utilised earlier than envisaged, by the next Prime Minister, Theresa May, in spring 2017 in the unprecedented circumstances surrounding 'Brexit'. The PM's motion for an early general election on 8 June 2017 was fully supported by the Opposition.

⁸⁸² David Laws, *22 Days in May* (Biteback Publishing 2010) 183

⁸⁸³ HC Deb 13 September 2010, vol 515, cols 621-710

⁸⁸⁴ HC Deb 6 September 2010, vol 515, cols 34-146

⁸⁸⁵ Five hours each for first and second days and four on the third day (a continuation of the 'second sitting'): HC Deb 16 November 2011, vol 518, cols 770-856; HC Deb 24 November 2011, vol 519, cols 295-373; HC Deb 1 December 2011, vol 519, cols 825-889

⁸⁸⁶ HC Deb 18 January 2011, vol 521, cols 708-812

⁸⁸⁷ HC Deb 6 September 2010, vol 515, col 138

⁸⁸⁸ HC Deb 12 October 2010, vol 516, cols 197-301; HC Deb 18 October 2010, vol 516, cols 641-768; HC Deb 19 October 2010, vol 516, cols 837-920; HC Deb 20 October 201, vol 516, cols 995-1104; HC Deb 25 October 2010, vol 517, cols 27-137

⁸⁸⁹ HC Deb 1 November 2010, vol 517, cols 653-738; HC Deb 2 November 2010, vol 517, cols 795-892

be described as ‘constitutional Bills’, three ‘spent more than 100 hours in the Committee of the Whole House in the House of Commons’ – the *European Communities Bill 1971-2*, the *European Communities (Amendment) Bill 1992-93* and the *Scotland Bill 1977-78* – and at the other end of the spectrum, fewer than ‘half of the 15 Bills were given more than one day’s debate’ at Second Reading in the Commons’.⁸⁹⁰

The rushed nature of the constitutional reforms was further apparent in the lack of any pre-legislative scrutiny. Although no such commitments were contained in the Coalition Agreement, it is a legitimate expectation that constitutionally significant change, such as legislation to reform Parliament, be subject to an open and transparent consultation process. The Coalition Government stated that it remained ‘committed to a three-month minimum period for pre-legislative scrutiny...[and] hope[d] that the long first Session will provide a longer lead time for the production of draft bills’;⁸⁹¹ yet the timetable adopted precluded any pre-legislative scrutiny – the PCRC had instead to follow a ‘parallel process of scrutiny’.⁸⁹² The Committee’s First Report stridently reiterated its concern over the lack of pre-legislative scrutiny or ‘prior consultation’ on a ‘Bill of this legal and constitutional complexity’⁸⁹³ with similar accusations targeted at the *Parliamentary Voting Systems and Constituencies Bill*; here, the Committee asserted that ‘bills of such legal and constitutional sensitivity should be published in draft for full pre-legislative scrutiny, rather than proceeded with in haste’.⁸⁹⁴ It was claimed that the Leader of the House had said that pre-legislative scrutiny was ‘not possible’ for all constitutional Bills in the first term of a Parliament’.⁸⁹⁵

The quality of legislation can be hugely improved by adequate scrutiny, not only during the parliamentary legislative journey but, perhaps, even more crucially at pre and post-legislative stages.⁸⁹⁶ Inadequate scrutiny at the outset can result in ‘flaws and incoherence...with a policy

⁸⁹⁰ House of Commons Library Research Paper 97/97, ‘Time Spent on Government Bills of Constitutional Significance since 1945’ (1 August 1997)

⁸⁹¹ Liaison Committee, *The Work of Committees in Session 2008–09: Government Response to the Committee’s Second Report of Session 2009–10* (HC 2010-11, 415) 4

⁸⁹² PCRC, *Parliamentary Voting System and Constituencies Bill*, (HC 2010-11, HC 437) 7

⁸⁹³ PCRC, *Fixed-term Parliaments Bill* (HC 2010-11, 436) 5

⁸⁹⁴ *ibid* 7

⁸⁹⁵ HC Deb 26 July 2010, vol 514, col 711

⁸⁹⁶ See, for example, Griffith and Ryle, *Parliament Functions, Practice and Procedures* (Robert Blackburn and Andrew Kennon eds, 2nd edn, Thomson Sweet and Maxwell 2003); ‘Making the Law: The Report of the Hansard Society Commission on the Legislative Process’ (Hansard Society, 1993)

and how government proposes to implement it' which become more apparent as the legislation is drafted and after implementation, when the consequences are clearer.⁸⁹⁷ The advantages of adequate and effective pre-legislative scrutiny are stressed in the Cabinet Office Guide; 'pre-legislative scrutiny...allows thorough consultation on the Bill while it is still in a more easily amendable form, and makes it easier to ensure that both potential Parliamentary objections and stakeholder views are elicited. This can assist the passage of the Bill when it is introduced to Parliament at a later stage'.⁸⁹⁸ It also clarified that, unless there are reasons to the contrary, a 'Commons departmental Select Committee will be the chosen route' for Parliamentary pre-legislative scrutiny.⁸⁹⁹ Although the Government's view was that '[pre-legislative]scrutiny by a joint committee is likely to be more appropriate than scrutiny by a select committee of the Commons for bills of major constitutional importance.'⁹⁰⁰

Developments arising soon after the *Parliamentary Voting Systems and Constituencies Act 2011* received Royal Assent provided a germane reminder of problems which may result from inadequate scrutiny. Rumours were reported that, as the Boundary Commission review⁹⁰¹ was due to announce its initial proposals,⁹⁰² disgruntled MPs on the Government benches were hoping to force Government to delay the implementation of the constituency changes until long beyond the next election (when the changes were due to come into effect).⁹⁰³ In the end this proved unnecessary as the Liberal Democrat part of the Coalition Government

⁸⁹⁷ Matt Korris, 'Standing up for Scrutiny: How and Why Parliament Should Make Better Law' (2011) 64(3) Parliamentary Affairs 565

⁸⁹⁸ Cabinet Office, *Guide to Making Legislation* (July 2015) 22.4

⁸⁹⁹ Cabinet Office, *Guide to Making Legislation*, 22.7

⁹⁰⁰ Liaison Committee, *The Work of Committees in Session 2008–09: Government Response to the Committee's Second Report of Session 2009–10* (HC 2010–11, 415) 3; see also Alex Brazier, 'Issues in Law Making - Briefing Paper 5: Pre-Legislative Scrutiny', (Hansard Society, July 2004); Jennifer Smookler, 'Making a Difference? The Effectiveness of Pre-Legislative Scrutiny' Parliamentary Affairs (July 2006) 59(3) 522

⁹⁰¹ Which commenced on 22 February 2011 and was due to report in autumn 2013

⁹⁰² Expected on 13 September 2011 - The Parliamentary Voting and Constituencies Act requires the Boundary Commission to submit its first report before 1 October 2013. In January 2013, Labour and Liberal Democrat peers voted in favour of an amendment to the Electoral Registration and Administration Bill that would see the planned constituency shake-up postponed until 2018 at the earliest.

⁹⁰³ Robert Winnett and Christopher Hope, 'Tory MPs angry over axed seats', *Daily Telegraph* (10 September 2011) 20

withdrew its support for the measure voting against the proposed boundary changes.⁹⁰⁴The 2013 Boundary Review was thus postponed until 2018.⁹⁰⁵

A. The Fixed-Term Parliaments Act 2011⁹⁰⁶

‘It may be a short Bill, but...it is long on implications’.⁹⁰⁷ The Fixed-Term Parliaments legislation has been described in various ways, including as ‘a constitutional innovation of significant proportions’⁹⁰⁸through which David Cameron became ‘the first Prime Minister in British history to give up the right unilaterally to ask the Queen for dissolution of Parliament....[which was] a huge change in our system....a big giving up of power’⁹⁰⁹and equally accurately as ‘a hastily concocted Bill’⁹¹⁰which was ‘ill-thought through, rushed and does not appear to provide a satisfactory solution, which ideally should be one around which there can be political consensus’.⁹¹¹

2. Why were Fixed-Term Parliaments introduced?

On 11 May 2010 the Coalition partners published a paper setting out the agreements which had been reached in their negotiation. As part of the ‘Political Reform’ section the ‘parties agree[d] to the establishment of five year fixed-term parliaments’.⁹¹²The Bill was described as ‘the creature of coalition’⁹¹³and, as with so many matters under a Coalition Government, the consensus reached involved much compromise. A prominent Conservative backbencher noted that the ‘parliamentary party was consulted about whether there should be a coalition, and whether there should be a commitment to a referendum on the alternative vote, but the

⁹⁰⁴ BBC News, ‘Conservatives lose boundary review vote’ (29 January 2013)

⁹⁰⁵ ‘Closure of 2013 Review’ Boundary Commission News (31 January 2013)

<<http://webarchive.nationalarchives.gov.uk/20140404084345/http://consultation.boundarycommissionforengland.independent.gov.uk/news/closure-of-2013-review/>>

⁹⁰⁶ Introduced as the *Fixed-term Parliaments Bill 2010-11* [Bill 64 of 2010-11]

⁹⁰⁷ HC Deb, 13 September 2010, vol 515, col 678

⁹⁰⁸ PCRC, *The Coalition Government's programme of political and constitutional reform* – oral and written evidence, 15 July 2010, HC 358-ii, Q67

⁹⁰⁹ BBC, ‘Cameron defends change over election vote rules’ (14 May 2010)

⁹¹⁰ PCRC, *Fixed Term Parliaments Bill* (HC 2010-11, 436-I) Ev5, Q19

⁹¹¹ PCRC, *Fixed-term Parliaments Bill* (HC 2010-11, 436) 5

⁹¹² *Conservative Liberal Democrat coalition negotiations: Agreements reached* (11 May 2010), p3 para 6

⁹¹³ Lord Cormack, HL Deb 18 July 2011, vol 729, col 1087

question of a fixed-term Parliament was never mentioned...until it appeared in the coalition agreement.⁹¹⁴

The Government set out, as its first 'action' on political reform, to establish fixed-term Parliaments; the project, led by the Cabinet Office Constitution Group (COCG), was to be completed by July 2011.⁹¹⁵ This milestone, to have enacted a Bill on fixed-term parliaments, was missed by two months. Had longer been spent on pre-legislative scrutiny and attempts to obtain cross-party agreement on the details *before* publishing the Bill the actual legislative process would likely have been less problematic and more timely.⁹¹⁶ Cross-party consensus on the general concept of fixed-term Parliaments had been a reality for some time and was specifically addressed in the Liberal Democrat and Labour parties 2010 Election Manifestos. The Liberal Democrats pledged to introduce fixed-term parliaments 'to ensure that the Prime Minister of the day cannot change the date of an election to suit themselves';⁹¹⁷ as the DPM later asserted, it is 'simply not right that general elections can be called according to a Prime Minister's whims'.⁹¹⁸ Labour's 2010 manifesto also contained a pledge to introduce '[L]egislation to ensure Parliaments sit for a fixed term'.⁹¹⁹ The 2010 Conservative Party Manifesto, however, contained nothing on the fixing of Parliamentary terms; in evidence to the PCRC the closest pledge appeared to be that 'to make the Royal Prerogative subject to greater democratic control so that Parliament is directly involved'.⁹²⁰

3. Beyond Parliament - Wider support for Fixed-Term Parliaments

In a debate 20 years before these developments, an opinion poll displaying over 2 to 1 support among the public for a fixed date for general elections⁹²¹ was cited by Lord Holme.⁹²² More

⁹¹⁴ Bernard Jenkin, *Fixed-term Parliaments Bill* Debate, HC Deb 24 November 2010, vol 519, col 321

⁹¹⁵ HMG, *Political Reform: Draft Structural Reform Plan* (27 July 2010) p4 [Action 1.1(i) and Milestone C]

⁹¹⁶ See discussion below (at Section B) re similar issues with AV legislation, albeit the 'milestone' of May 2011 set for the 'Referendum on the Alternative Vote' was met - HMG, *Political Reform: Draft Structural Reform Plan* (27 July 2010) p6 [Action 1.8(i) and Milestone G]

⁹¹⁷ Liberal Democrat Manifesto 2010, *Change that works for you, Building a Fairer Britain*, 88

⁹¹⁸ HC Deb 5 July 2010, vol 513, col 23

⁹¹⁹ The Labour Party Manifesto 2010, *A Future Fair for All*, 9:2

⁹²⁰ Robert Hazell, 'Fixed Term Parliaments' (Constitution Unit, UCL, August 2010) p23, para 6.2
Conservative Party Manifesto 2010, *Invitation to Join the Government of Britain*, 67

⁹²¹ MORI opinion poll carried out for the Joseph Rowntree Social Services Trust

⁹²² Lord Holme of Cheltenham, HL Deb 22 May 1991, vol 529, col 247

recently, the 2010 'State of the Nation Survey' found that, in response to the proposition of fixing the length of a Parliament 'removing the Prime Minister's power to choose the date of the next election', 64 per cent agreed with the suggestion (either 'strongly' - 39 per cent - or 'slightly' - 25 per cent) and only 13 per cent were opposed to it.⁹²³ Over the years various proposals have been advanced both within Parliament and outside. Blick summarised criticisms made during the decades leading up to the advent of the legislation:

Objections to the existing arrangement included that it gave an unfair advantage to the government of the day over opposition parties, allowing it to manipulate political circumstances and choose an optimal date for a poll. Furthermore, critics held, the flexible system placed excessive authority personally in the hands of prime ministers, and could lead to pronounced doubt about the political future, with problematic consequences for business, the work of the civil service and the lives of ordinary people.⁹²⁴

4. Practical Issues during the Passage of the Bill

4.1. Key Provisions of the Fixed Term Parliaments Act 2011

The *Fixed-Term Parliaments Act 2011* has two notable outcomes: first, it provides for fixed days for polls for general elections at five-yearly intervals;⁹²⁵ and secondly, it removes the Monarch's Prerogative power to dissolve Parliament, providing instead for automatic dissolution after a specific period of time. There are, however, provisions enabling a Prime Minister to alter the date by up to two months⁹²⁶ so a Parliament could, in exceptional circumstances – the example provided in the Explanatory Notes accompanying the Bill is that of the delayed election in 2001⁹²⁷ as a result of a foot and mouth disease outbreak⁹²⁸ – last for

⁹²³ *State of the Nation Survey 2010* (ICM on behalf of the Joseph Rowntree Reform Trust, 16 February 2010)

⁹²⁴ Andrew Blick, 'Constitutional Implications of the Fixed-Term Parliaments Act 2011' (2016) 69(1) Parliamentary Affairs 19, 20

⁹²⁵ *Fixed-term Parliaments Act 2011*, s 1(2) and s 1(3)

⁹²⁶ By Affirmative Statutory Instrument see Fixed-term Parliaments Bill [64] s.1(5)

⁹²⁷ Leading to the Elections Act 2001

⁹²⁸ Also referred to by the DPM at Second Reading: HC Deb 13 September 2010, vol 515, col 624

62 months. Consequently the Parliament Acts 1911 and 1949 could not have been deployed to pass the Bill without the agreement of the Lords, as one of the few exceptions to the use of the Parliament Acts is that of 'a Bill containing any provision to extend the maximum duration of Parliament beyond five years'.⁹²⁹

4.2. Recognition of its Significance

At Second Reading, after five and a half hours of debate, the House of Commons voted for the Bill to be considered by a Committee of the Whole House as conventionally happens for 'democratic'⁹³⁰ or 'constitutional' Bills.⁹³¹ The Programme Motion which provided for two days of Committee Stage was passed by 304 votes to 27,⁹³² however, in recognition of the fact that there were disagreements on the detail, if not the principle, of the legislation and that 'debate on the Bill has been vigorous'⁹³³ an extra, third, day was agreed to.⁹³⁴

4.3. General Dissolution Issues

The Electoral Commission submitted evidence to the PCRC calling on Government to 'review the deadlines for all relevant election-related activities',⁹³⁵ essentially suggesting an amendment to extend the timetable, to 25 working days, which would bring it into line with local elections. This opportunity was not taken up; clause 3 of the Act stated that Parliament was to be dissolved 17 working days before the date of each general election.⁹³⁶ The government's later proposals on electoral administration, however, included 'provisions which extend the timetable for UK parliamentary elections from 17 to 25 days and...the

⁹²⁹ *Parliament Act 1911* s.2(1) as amended

⁹³⁰ Allen's phrase: HC Deb 13 September 2010, vol 515, col 661

⁹³¹ See above - 'Treatment of 'constitutional' legislation in the Westminster Parliament'; For detailed discussion of the matter see cited Commons Library Resources

⁹³² HC Deb 13 September 2010, vol 515, cols 708-710

⁹³³ HC Deb 18 January 2011, vol 521, col 793

⁹³⁴ Programme motion (No. 2): HC Deb 24 November 2010, vol 519, col 294

⁹³⁵ PCRC, *Government proposals for voting and parliamentary reform (including written evidence relating to both the Fixed-term Parliaments Bill and the Parliamentary Voting System and Constituencies Bill - Written evidence*, 7 September 2010, VPR 04 paras 4.3-4.5 (3 September 2010)

⁹³⁶ as per Clause 3(1) HL Bill 69 2010-12

timetable for UK parliamentary by-elections’.⁹³⁷ This provides an apposite opportunity to observe the lack of cohesion in the Coalition Government’s parliamentary reforms, particularly considering the government’s commitment⁹³⁸ to speeding up individual voter registration (IER), on which it later published a White Paper.⁹³⁹ Would it not have been logical for Government to have addressed, at least some of, these related matters at the same time as the legislation on Fixed-term Parliaments?

4.4. Prerogative Powers

As a consequence of removing the Monarch’s Prerogative power to dissolve Parliament (which by convention, was on the advice of the PM) and placing it on a statutory footing,⁹⁴⁰ Queen’s Consent was required; this was signified at Second Reading.⁹⁴¹ Summoning Parliament after a General Election remains a Prerogative power, as does the Monarch’s ability to prorogue Parliament - that is, to suspend or discontinue a session of Parliament without dissolving it.⁹⁴²

4.5. Exceptions

The exceptions, under which an early election might be called, are: first, where a motion of no confidence is passed, and no alternative government is confirmed within 14 days;⁹⁴³ or secondly, where a motion for an early general election is voted for by a number of members equal to or greater than two thirds of the House (equating to 434 MPs).⁹⁴⁴ In relation to the

⁹³⁷ PCRC, *Individual Electoral Registration – written evidence*, 15 July 2011, Letter from Mark Harper MP, Minister for Political and Constitutional Reform, to Graham Allen MP, Chair of the Political and Constitutional Reform Committee, House of Commons on 13 July 2011; HMG, *Draft Electoral Administration Provisions*, July 2011, Cm 8150

⁹³⁸ HMG, *Political Reform: Draft Structural Reform Plan* (27 July 2010) p6 [Action 1.9(i) and (ii)]

⁹³⁹ HMG, *Individual Electoral Registration*, June 2011, Cm 8108; PCRC News Release, ‘Call for evidence: The Government’s proposals on Individual Electoral Registration’ (8 July 2011)

⁹⁴⁰ s.3

⁹⁴¹ ‘Consent is normally signified in the Commons at the Third Reading stage of a Bill, but if the Bill fundamentally affects the prerogative or interests, Consent will usually be signified at Second Reading’ – see Political and Constitutional Reform Committee, *The impact of Queen’s and Prince’s Consent on the legislative process* (HC 2013-14, 784) 12

⁹⁴² *Fixed-term Parliaments Bill* [Bill 64] s.4(1); Fixed-term Parliaments Act 2011, s 3(4) and 6(1)

⁹⁴³ s.2(3) and 2(4)

⁹⁴⁴ s.2(1) and 2(2)

first of these, the Bill, as introduced, had indicated that such a 'motion of no confidence' would be signified by a Speaker's Certificate⁹⁴⁵ which led to concerns, first, in terms drawing the Speaker into 'the realms of political controversy',⁹⁴⁶ and secondly, the possibility that these could become 'justiciable questions for determination by the ordinary courts'.⁹⁴⁷ Ministers initially responded to the concerns raised (by the Constitution Committee)⁹⁴⁸ that they were not persuaded to specify (in the Bill) the wording of motions of no confidence as to do so would 'have needlessly interfered in the House of Commons internal arrangements'.⁹⁴⁹ In due course, however, under pressure from the Lords to amend the provisions for forcing an early election the Government accepted, at Report Stage, a back-bench amendment to replace clause 2 and no longer require a Speaker's certificate.⁹⁵⁰

5. The Contribution of the PCRC's Work on Fixed Term Parliaments

The PCRC Inquiry succeeded in highlighting areas of agreement and of shared concern amongst experts: the matters giving rise to disagreement related to the detail and practical implications of the legislation rather than matters of principle, for example, the relationship with elections in the devolved legislatures, the proposed threshold for an early General Election and the length of the fixed-terms.

5.1. Context of Devolved Institutions – Election Timing

⁹⁴⁵ Fixed-term Parliaments Bill 2010-11 s.2

⁹⁴⁶ Philip Norton, 'The Fixed-term Parliaments Act and Votes of Confidence' (2016) 69(1) Parliamentary Affairs 3, 11. For example, as Norton explains: 'The Government may decide that a vote on Second Reading of a Government Bill was one of confidence. The Speaker potentially could take a different view and refuse to certify it. The vote on a Second Reading of major Government Bill may be considered by the Opposition to be one of confidence, but not be treated as such by the Speaker...'

This was disputed by Government - HMG, *Government response to the report of the House of Lords Constitution Committee on the Fixed-term Parliaments Bill* (Cm 8011, 2011) para 34

⁹⁴⁷ Norton, 'The Fixed-term Parliaments Act' 11

⁹⁴⁸ Constitution Committee, *Fixed-term Parliaments Bill* (HL 2010-12, 69)

⁹⁴⁹ HMG, *Government response to the report of the House of Lords Constitution Committee on the Fixed-term Parliaments Bill* (Cm 8011, 2011) 36

⁹⁵⁰ HL Deb 16 May 2011, vol 727, col 1170 - Amendment 20 tabled by Lord Howarth, with the support of Lords Martin and Pannick, and Lady Boothroyd.

The Government ‘noted’ concerns, raised by the PCRC Report, of clashes with elections for the devolved legislatures in Scotland, Wales and Northern Ireland⁹⁵¹ explaining that it was ‘continuing to work with the interested parties to discuss how best to handle this issue’⁹⁵² which was ultimately resolved by the inclusion in the Act of a rule prohibiting general elections for the Scottish Parliament or Welsh Assembly on the same date as Parliamentary General Elections.⁹⁵³

5.2. The 55 per cent Threshold for Dissolution: ‘A Recipe for Anarchy’?

A proposal requiring 55 per cent of the Commons to vote for dissolution, set out in the initial Coalition Agreement,⁹⁵⁴ was much criticised, by both the Opposition⁹⁵⁵ and Government backbenchers. One notable critic was Christopher Chope (later a member of the PCRC) who, during the first Adjournment debate of the new Parliament, described the 55 per cent threshold as a ‘recipe for anarchy’,⁹⁵⁶ reported by the BBC.⁹⁵⁷ Following the practice adopted by the Scottish Parliament and the Welsh Assembly, an alternative proposal with a threshold of 66 per cent (two thirds) was announced in early July.⁹⁵⁸

5.3. Four or Five-Year Terms

Much discussion focused on whether the fixed-terms ought to be four or five years in length, with a number of academic witnesses all expressing a clear preference for four-year terms.⁹⁵⁹ The argument against increasing terms is simple – ‘elections should be more frequent. They

⁹⁵¹ See PCRC, *Fixed-term Parliaments Bill* (HC 2010-11, 436) 19

⁹⁵² HMG, *Government response to the report of the Political and Constitutional Reform Committee on the Fixed-term Parliaments Bill* (HC 2010-11, Cm 7951) 6; Also Correspondence with Scottish Parliament and Welsh Assembly

⁹⁵³ Fixed-term Parliaments Act 2011, s.4 and 5; I understand the 2017 General Election will necessitate further adjustments as there are potential clashes with devolved institution elections in 2022

⁹⁵⁴ *Conservative Liberal Democrat coalition negotiations – Agreements reached* (11 May 2010; Cabinet Office, *The Coalition Agreement for Stability and Reform* (May 2010)

⁹⁵⁵ HC Deb 7 June 2010, vol 511, col 40

⁹⁵⁶ HC Deb 25 May 2010, vol 510, cols 135-154

⁹⁵⁷ BBC, ‘Cameron defends change over election vote rules’ (14 May 2010)

⁹⁵⁸ HC Deb 5 July 2010, vol 513, col 24

⁹⁵⁹ Oliver FTPB 02, 3 (9 August 2010); Hazell FTPB 03, 4; Blackburn FTPB 04, 20 (3 September 2010) and oral evidence; and Brazier FTPB 05, 7

are basic to the democratic process.⁹⁶⁰ Interestingly, a fixed term of four years had been proposed by the Liberal Democrats in their negotiations with the Labour party before the Conservative-Liberal Democrat Government had been formed.⁹⁶¹ Those proposals were cited by Jack Straw during the Bill's Committee Stage.⁹⁶² The PCRC Report recommended that Government 'explain more fully to the House the advantages and disadvantages of four and five year terms, and how it weighed these up in reaching its decision'.⁹⁶³ During Committee Stage, a member of the PCRC (Hunt) cited evidence indicating a preference for four-year terms⁹⁶⁴ including the 'key quote from Professor Blackburn' that it was 'likely that the Coalition's concern with concretising its political alliance, and having the longest period possible in which to implement its tax increases and cuts in public expenditure and then recover sufficient popularity in time for its next meeting with the electorate, has affected its judgement in this matter'.⁹⁶⁵ On the whole, the Commons debate centred not on the principle of the legislation, upon which there was a general consensus, but on the detail of the content, specifically the five-year parliamentary terms being proposed. The Government's explanation was that 'a five-year fixed term is right, not only for this Parliament but for subsequent Parliaments, as it will provide the country with the strong and stable Government that it needs'.⁹⁶⁶

Ultimately, under the Westminster system of Parliamentary Sovereignty, a future Parliament could, by a simple majority of 51 per cent, amend the legislation to four-year terms. Whilst arguments can be made about the theoretical entrenchment of 'constitutional' legislation and it would, indeed, be politically foolish for a future PM to repeal the legislation entirely and take back power to decide upon the date of a General Election, a relatively minor amendment such as adjusting the term is far from impossible.

⁹⁶⁰ HC Deb 16 November 2010, vol 518, col 798

⁹⁶¹ 'Recovery and Renewal: A headline programme for a new government (Draft), 10 May 2010' 1.1 - setting out the Liberal Democrats proposals in the coalition talks (with Labour) for what became the coalition agreement.

⁹⁶² HC Deb, 24 November 2010, vol 519, col 307; Straw referred to the source of this document as the website of the New Statesman. See George Eaton, 'Revealed: what the Lib Dems really said to Labour' *New Statesman* (17 November 2010)

⁹⁶³ PCRC, *Fixed-term Parliaments Bill* (HC 2010-11, 436) 20

⁹⁶⁴ HC Deb 16 November 2010, vol 518, col 772

⁹⁶⁵ HC Deb 16 November 2010, vol 518, col 794

⁹⁶⁶ HC Deb 16 November 2010, vol 518, col 838

6. Tangible Impact and Influence of the PCRC Report on the Fixed Term Parliaments Legislation

The Committee was clear from the outset that, under the limited circumstances in which it could scrutinise the legislation; its Report was to ‘provide *a context for the detailed examination of the Bill by the House at committee stage*’.⁹⁶⁷ Similarly amendments tabled by members of the PCRC were intended to enable debate in the Commons on important aspects of the legislation, and to provide the House with greater clarity around some of the confusing and contentious elements of the Bill, rather than be pressed to actual divisions. The Committee’s amendments were ‘genuinely meant to be helpful to Ministers and to forewarn them’.⁹⁶⁸

6.1. Evaluation of Tangible Influence – Quantitative and Qualitative (Summary)

In terms of specific input to the legislative process, in a quantitative sense, the impact of the PCRC’s Report was indeed significant; for example, during the Bill’s Second Reading in House of Commons there were 36 references to the PCRC’s work.⁹⁶⁹ At Third Reading there were six references to the PCRC and evidence it provided.⁹⁷⁰ The Committee’s Report and the Government’s response were ‘tagged’ as relevant documents during the Commons stages. It is, however, important to acknowledge that quantitative analysis of influence is notoriously difficult to treat as definitively reliable⁹⁷¹ and is one factor in determining the ‘success’ of a Committee. In this context additional factors were the Constitution Committee’s Report, which was also influential and that other Committees - the JCHR and Delegated Powers and Regulatory Reform Committee - also had input (and in the case of the latter actually led to a specific amendment to the Bill). It is also important to remember that a ‘simple tally of recommendations accepted or rejected does not give a full impression of how much attention

⁹⁶⁷ PCRC, *Fixed-term Parliaments Bill* (HC 2010-11, 436) 51 [emphasis added]

⁹⁶⁸ HC Deb 16 November 2010, vol 518, col 815

⁹⁶⁹ HC Deb 13 September 2010, vol 515, cols 621-710

⁹⁷⁰ HC Deb 18 Jan 2011, vol 521, cols 793, 798, 802 and 804; Evidence by Blackburn and Hazell - HC Deb 18 Jan 2011, vol 521, col 802

⁹⁷¹ Meg Russell and Megan Benton, ‘Selective Influence: The Policy Impact of House of Commons Select Committees’ (London, UCL Constitution Unit, June 2011) 69-70

has been paid to the committee's report'⁹⁷² and also that 'the number of amendments should not automatically be seen as a guide to the intellectual or preparatory rigour of the legislative process'.⁹⁷³

Influence may also be judged in other ways – many of which are less immediately tangible but perhaps more meaningful; evaluating influence in a qualitative sense involves consideration of aspects in which influence might be measured, such the reaction or response of the Government/Relevant Minister. In this context, the DPM, at Second Reading, directly referred to the relevance of the Committee's Report, opening the debate with a promise to address the Committee's concerns 'one by one'.⁹⁷⁴ He further acknowledged, at Third Reading, that the Political and Constitutional Reform Committee had been 'forensic in their scrutiny'.⁹⁷⁵

Another measurable factor of influence which can be identified here is that of better informed debate. The PCRC – principally through the pro-active nature of its work and the individual contribution of Committee members – greatly helped clarify matters of confusion and disagreement, particularly the issue of jurisdiction and parliamentary privilege. At least five members of the Committee, contributed to the Second Reading debate⁹⁷⁶ and Committee Stage.⁹⁷⁷ Of the 18 back-benchers who spoke at Second Reading, it was apparent that a significant number had read and digested, the PCRC Report; evidence compiled by the Committee was cited frequently throughout the debates, in both Houses (although, naturally, debate in the Lords focused more upon the Constitution Committee Report, which was also the more recently published paper).

In Parliament, non-specialists are expected to quickly digest and comprehend complex material outside their area of knowledge and experience, and then make decisions on important matters and, here, the work of a cross-party Select Committee performs a unique

⁹⁷² Andrew Kennon, 'Analysis: pre-legislative scrutiny of draft Bills' [2004] Public Law, 490

⁹⁷³ Matt Korris, 'Standing up for Scrutiny: How and Why Parliament Should Make Better Law' (2011) 64(3) Parliamentary Affairs 565, 568

⁹⁷⁴ HC Deb 13 September 2010, vol 515, col 621; See also response to Report's recommendations (below)

⁹⁷⁵ HC Deb 18 Jan 2011, vol 521, col 793

⁹⁷⁶ Allen, Boles, Chope, Gilmore, and Laing

⁹⁷⁷ Allen, Turner, Laing, Hart and Gilmore

and vital role in informing debate in a non-partisan manner. The evidence compiled by the Committee, and the prominence given, during the Second Reading debate in the Commons, to the views of academic experts on the constitution played a significant part in rebutting the assertion made by the Clerk of the House that the doctrine of parliamentary privilege could be harmed by the legislation.⁹⁷⁸ The Committee's work undoubtedly helped to ensure that issues debated had a more authoritative base and reduced the extent of conjecture and political opinion. This in itself was a notable achievement, and an approach which would come to define the style and methodology adopted by the PCRC.

7. The PCRC Report – Specific Recommendations and Responses

Whilst recognising that it was obviously too late to rectify the poor practice demonstrated through the failure on the part of the Coalition Government's to introduce its first significant parliamentary reform proposals in a timely manner, it was an encouraging sign that the Government's response to the Committee gave an assurance that 'future constitutional legislation will receive pre-legislative scrutiny'.⁹⁷⁹ The Committee's Report (combined with individual members highlighting various procedural failings) was likely to have been a significant factor in securing this commitment from Government.

By 14 November 2010, the first day of Committee Stage, the Government's response to the PCRC's Report had been published.⁹⁸⁰ The focus in the following discussion is on the substantive recommendations which called for action, response or clarification on the part of Government, rather than those which were a reference to future inquiry plans on the part of the PCRC. In order to determine whether they met with an adequate response from Government these are considered below, by issue: parliamentary privilege/jurisdiction; length of Parliamentary term; and dissolution.

⁹⁷⁸ Discussed below

⁹⁷⁹ HMG, *Government response to the report of the Political and Constitutional Reform Committee on the Fixed-term Parliaments Bill* (Cm 7951, 2010) 14

⁹⁸⁰ *ibid*

7.1. Parliamentary Privilege

A central area of disagreement, between the Clerk of the House⁹⁸¹ and academic experts was the impact of the *Fixed Term Parliaments Bill* upon parliamentary privilege - the 'exclusive cognisance' of Parliament - and the delicate balance between the courts and Parliament and their respective jurisdictions. The Committee recommended that the Government 'respond to the concerns expressed by the Clerk of the House of Commons'⁹⁸² who had suggested⁹⁸³ that the 'Bill brings the internal proceedings of the House into the ambit of the Courts'⁹⁸⁴ through 'the Speaker's consideration of confidence motions' which would become 'justiciable questions' and could draw the courts 'into matters of acute political controversy'.⁹⁸⁵ He argued that Standing Orders would be a more appropriate method of bringing about fixed term Parliaments, as they clearly fall within the internal affairs of Parliament and cannot be questioned in court. The Government's response to this recommendation⁹⁸⁶ was deposited in the House of Commons Library.⁹⁸⁷ During debate in the Commons the Minister responded, to the jurisdictional question (in this instance raised by Bernard Jenkin)⁹⁸⁸ citing Blackburn's evidence to PCRC that 'the government's Fixed-Term Parliaments Bill has been technically well-drafted by the Cabinet Office's parliamentary counsel, particularly in avoiding judicial review of its provisions on early elections by way of Speaker's certificates'.⁹⁸⁹ This controversy, over the possibility of legal challenges, attracted media attention with various newspapers, particularly *The Guardian*⁹⁹⁰ and *Daily Telegraph*,⁹⁹¹ making reference to the PCRC's work and thus adding to its influence.

⁹⁸¹ Dr Michael Jack, Written Evidence submitted by the Clerk of the House, FTPB 01 (24 August 2010); PCRC, *Fixed-term Parliaments Bill* (HC 2010-11, 436) Ev1, Ev8

⁹⁸² PCRC, *Fixed-term Parliaments Bill* (HC 2010-11, 436) 29

⁹⁸³ Written Evidence submitted by Clerk of the House, FTPB 01, 12 (24 August 2010)

⁹⁸⁴ A Speaker's Certificate being the means by which a dissolution of the House would be confirmed under the provisions of the FTP Bill – i.e. the Speaker is to issue a certificate (under clause 2(1)(a)) that the House has passed a motion that there should be an early parliamentary election

⁹⁸⁵ Written Evidence submitted by the Clerk of the House, FTPB 01, 16 (24 August 2010)

⁹⁸⁶ Identified by government as PCRC's recommendations 8, 9 and 10

⁹⁸⁷ HMG, *Government response to the report of the Political and Constitutional Reform Committee on the Fixed-term Parliaments Bill* (Cm 7951, 2010) Annex A: A note from the Minister for Political and Constitutional Reform, *Fixed-Term Parliaments Bill: Note on Implications for Parliamentary Privilege*

⁹⁸⁸ HC Deb 1 December 2010, vol 519, col 866

⁹⁸⁹ PCRC, *Fixed-term Parliaments Bill* (HC 2010-11, 436), Ev 47, 28

⁹⁹⁰ Patrick Wintour, 'Legal Alarm over Fixed-Term Parliaments' *The Guardian* (8 September 2010)

⁹⁹¹ 'Judges could rule on election dates, Commons official warns' *Daily Telegraph* (8 September 2010); 'Coalition 'rushing' Parliament reform' *Daily Telegraph* (11 September 2010)

The final version of the legislation no longer included the involvement of the Speaker. The Government had accepted an amendment, at Report stage, in the House of Lords, which removed the requirement for a Speaker's certificate.⁹⁹² This example perhaps also provides an interesting illustration of the uniqueness of the British Constitution whereby the 'flexibility that was possible under a convention [in relation to the consequences of a motion of no confidence] clashed with the need for certainty in legislative drafting'.⁹⁹³

Another change in the legislation, brought about as a result of an extended 'ping pong' between the Houses just before and after the summer recess⁹⁹⁴ revolved around a number of so-called 'sunset clauses' introduced by the House of Lords which provided that '[E]ach subsequent Parliament would have the choice of whether to be a fixed-term Parliament or not'⁹⁹⁵ and would, arguably, have helped ensure post-legislative scrutiny. In opposing these amendments, as 'they fundamentally undermine the purpose of the Bill', the Minister (Harper) drew upon the PCRC's support for the 'purpose of the Bill'.⁹⁹⁶ Whilst the sunset clause was rejected,⁹⁹⁷ the Act does contain a provision requiring the establishment of a Committee to carry out a review of its operation in 2020 (assuming that the Act has not been repealed prior to this) and for that Committee's findings and recommendations to be published.⁹⁹⁸ Provisions enabling post-legislative scrutiny are unusual but not entirely without precedent.⁹⁹⁹

7.2. Length of Parliamentary Term following an early election

⁹⁹² As referred to above - Amendment 20 proposed by Lord Howarth of Newport. HL Deb 16 May 2011, vol 727, cols 1146-1179

⁹⁹³ Norton, 'The Fixed-term Parliaments Act' 12

⁹⁹⁴ HC Deb 13 July 2011, vol 531, cols 360-389, and HL Deb 18 July 2011, vol 729, cols 1074-1103, HC Deb 8 September 2011, vol 532, cols 581-96, HL Deb 14 September 2011, vol 730, cols 806-825

⁹⁹⁵ HC Deb 13 July 2011, vol 531, col 360

⁹⁹⁶ HC Deb 13 July 2011, vol 531, col 360

⁹⁹⁷ The Commons reconsidered the Lords amendments (1,2 and 9) on 8 September 2011 and again voted (253 to 190) to reject them – HC Deb 8 September 2010, vol 532, cols 581-601

⁹⁹⁸ See s 7(4) *Fixed Term Parliaments Act 2011*: (4) The Prime Minister must make arrangements—

(a) for a committee to carry out a review of the operation of this Act and, if appropriate in consequence of its findings, to make recommendations for the repeal or amendment of this Act, and
(b) for the publication of the committee's findings and recommendations (if any).

⁹⁹⁹ For example s.122 of the *Anti-terrorism, Crime and Security Act 2001* provided for a Committee to review the Act within two years of it passing into law

The question here was whether the ‘clock should be kept ticking’ following an early General Election so that in such circumstances the new Parliament would run for the remainder of the original five-year term, which might be a matter of months or years, or if the clock should be ‘restarted’ so that the Parliament elected following an early General Election would have a full-term. Sooner than expected this matter moved from hypothesis to reality; with the early 2017 General Election, in effect, ‘extending’ the Parliament to 2022.

Evidence taken by the PCRC led it to recommend that ‘Government and the House should consider whether a Parliament following an early general election should last for only as long as the remainder of the term of the previous Parliament, and whether such a provision would make a super-majority for a dissolution unnecessary.’¹⁰⁰⁰ Hazell had indicated that it would act as ‘a strong disincentive to a government inclined to call an early election’ and also as ‘a disincentive to opposition parties tempted to force a mid-term dissolution’.¹⁰⁰¹ Blackburn’s view was that such amendment would help to ‘ensure a governing majority does not abuse its ability to push through an early election resolution for no good reason other than being a favourable time to itself to go to the polls’.¹⁰⁰²

The Committee Chair tabled an amendment at Committee Stage, which was spoken to by Laing, the de facto Deputy Chair, ‘on behalf of the Select Committee’.¹⁰⁰³ Not all Committee members had ‘put their names to this amendment’ and that Laing did not wish to press it to a Division but wanted ‘to put it before the House on behalf of the Select Committee because it was part of our process of pre-legislative scrutiny of this Bill’ and to provide the Commons with ‘an opportunity to consider the balance of the arguments’.¹⁰⁰⁴ Another argument made

¹⁰⁰⁰ Political and Constitutional Reform Committee, *Fixed-term Parliaments Bill* (HC 2010-11, 436) 39

¹⁰⁰¹ *ibid* FTPB 03 Ev 39, 7.7

¹⁰⁰² *ibid* FTPB 04 Ev 64, 20

¹⁰⁰³ As unfortunately, despite the best efforts of the Procedure Committee, as an entity a Select Committee cannot yet table an amendment. This seems a particularly good example of a situation when it would have been appropriate for the Committee as a whole (particularly with cross-party consensus so evident in Eleanor Laing’s speaking to Graham Allen’s amendment) to be able to table an amendment.

See Procedure Committee, *Improving the effectiveness of parliamentary scrutiny: (a) Select committee amendments (b) Explanatory statements on amendments (c) Written parliamentary questions* ((HC 2010-11, 800) 10-17, and particularly the recommendation in 21; and Procedure Committee, *Improving the Effectiveness of Parliamentary Scrutiny: (a) Select committee amendments (b) Explanatory statements on amendments (c) Written parliamentary questions: Government Response to the Committee’s Second Report of Session 2010–11* (HC 2010–12, 1043) p1

¹⁰⁰⁴ HC Deb 16 November 2010, vol 518, cols 814-6 (amendment 32)

in support of the proposed amendment, which would have prevented ‘the cycle of parliamentary constituency boundary reviews - as proposed by the Government in the *Parliamentary Voting System and Constituencies Bill* - from decoupling from regular general elections’¹⁰⁰⁵ is illustrative of the lack of coherence with the Government’s early constitutional legislative proposals; despite their simultaneous passage these pieces of legislation did not address linked matters in an adequately cohesive manner.

The Government view that ‘a Government could be returned following an early general election with a large majority, in which case it would make little sense to ask the voters to return to the polls in as little as a few months’¹⁰⁰⁶ and that ‘people expect that when they go to the polls, they are being asked to elect a Government which will last for a full term’¹⁰⁰⁷ was supported by the Constitution Committee which ‘agreed...that a newly elected Government should have a full term of office...and it would make little sense to ask the voters to go back to the polls when they had sent out a clear message.’¹⁰⁰⁸ Such divergence in views between Select Committees presents an opportunity for Government (or Opposition, or indeed anyone citing a Committee Report as support for a particular proposition or policy) to ‘play one off against the other’ and choose to cite whichever Report (or aspects of) best suits its intentions at the time. This is an unavoidable weakness inherent in the Parliamentary Committee system and one that cannot be addressed if one of the great strengths of the Committee system – the ability to set their own agenda – is to be maintained.

7.3. Dissolution and Related Constitutional Conventions and Practices

The consequences of a lost vote of no confidence or censure motion have, under clause 2 of the Act, become established in law rather than operating as convention and practice. Clegg, in the Queen’s Speech debate, suggested new arrangements needed ‘to build on existing conventions, so that a distinction is maintained between no confidence and early

¹⁰⁰⁵ HC Deb 16 November 2010, vol 518, col 815

¹⁰⁰⁶ HMG, *Government response to the report of the Political and Constitutional Reform Committee on the Fixed-term Parliaments Bill* (Cm 7951, 2010) 41

¹⁰⁰⁷ *ibid* 42

¹⁰⁰⁸ HC Deb 18 January 2011, vol 521, col 788

dissolution'.¹⁰⁰⁹The convention of holding elections on Thursdays (as has happened with every general election since 1935) has now also crystallised as law¹⁰¹⁰and, in addition there has developed a convention that Parliamentary sessions usually run from autumn to autumn and last one year.¹⁰¹¹

a. Procedure following loss of a vote of confidence

The PCRC recommended that 'Government should explain why the Bill contains no formal provision requiring a government to resign if it loses the confidence of the House'¹⁰¹²and that 'there should be clarity...as to the circumstances in which a government losing the confidence of the House could trigger an early general election, and those circumstances, if any, in which it could not.'¹⁰¹³

One amendment tabled reflected the PCRC's view that, the need for the House to demonstrate confidence in an 'alternative government within fourteen days to avoid an early general election could be made impossible if the Government ensured that the House was adjourned or prorogued for any substantial length of time'¹⁰¹⁴and would have encouraged an incumbent Government to keep the House sitting rather than use the Prerogative power of Prorogation for purposes for which it should not be used, for example, to frustrate the formation of an alternative Government.¹⁰¹⁵Another echoed the Committee's findings that the Bill left to unwritten constitutional convention the requirement that a Government should resign if they lose the confidence of the House and suggested instead that where the House passed a motion of no confidence, the PM should 'tender his resignation to Her Majesty within a period of seven days of the motion being passed'.¹⁰¹⁶ In its initial response, the Government noted that it 'will be for the Speaker to certify what passing a motion of no-confidence in a Government is' but acknowledged that it would be 'prepared to consider this

¹⁰⁰⁹ HC Deb 7 June 2010, vol 511, col 40

¹⁰¹⁰ s.1(3)

¹⁰¹¹ See, for example, Griffith and Ryle, *Parliament Functions, Practice and Procedures* (Robert Blackburn and Andrew Kennon eds, 2nd edn, Thomson Sweet and Maxwell 2003)

¹⁰¹² PCRC, *Fixed-term Parliaments Bill* (HC 2010-11, 436) 50

¹⁰¹³ *ibid* 45

¹⁰¹⁴ *ibid* 48

¹⁰¹⁵ HC Deb 24 November 2010, vol 519, cols 365-8

¹⁰¹⁶ HC Deb 24 November 2010, vol 519, col 368

matter during the passage of the Bill'.¹⁰¹⁷ In any event, as discussed above, a later amendment in the Lords removed the need for a Speaker's certificate and further clarified the position in such circumstances.

b. Cross-party agreement for dissolution?

The PCRC's recommendation that 'the Bill could provide that the only situation in which an early general election could be called was where there was cross-party agreement that this was desirable'¹⁰¹⁸ illustrated another 'alternative' answer to the question of whether 55 per cent or a two-thirds majority should be required to bring about an early general election. It would also have addressed concerns raised by the Clerk of the House, to the PCRC, that 'this part of the Bill would infringe the House's "exclusive cognisance" over its own proceedings- its right to decide for itself how its business should be done, and the concomitant principle that the courts will not interfere.'¹⁰¹⁹

This PCRC recommendation subsequently led to what was described by the Minister as the 'lead amendment'¹⁰²⁰ which proposed 'an alternative way of bringing about what the Government seek to achieve in clause 2 [which would ensure that an early general election could take place only with cross-party support]'.¹⁰²¹ It was apparent that this particular proposal received limited support from the members of the PCRC itself and indeed was not supported by Laing who nonetheless 'moved it in a way that was very becoming to her parliamentary experience and the Committee enjoyed the opportunity with which it was presented'.¹⁰²² This is itself noteworthy as it provides a tangible example of the approach taken by the PCRC when working at its best – highlighting problems and attempting to assist in finding solutions – a far cry from political partisanship. The principal aim again was to 'encourage' the Minister to give due consideration to the issues and to respond adequately to the concerns raised by the Committee during its necessarily 'rushed' pre-legislative scrutiny

¹⁰¹⁷ HMG, *Government response to the report of the Political and Constitutional Reform Committee on the Fixed-term Parliaments Bill* (Cm 7951, 2010) 52

¹⁰¹⁸ PCRC, *Fixed-term Parliaments Bill* (HC 2010-11, 436) 41

¹⁰¹⁹ *ibid* 28

¹⁰²⁰ Harper, HC Deb 24 November 2010, vol 519, col 343

¹⁰²¹ HC Deb 24 November 2010, vol 519, col 300

¹⁰²² Harper, HC Deb 24 November 2010, vol 519, col 343

and evidence-taking.¹⁰²³ This was emphasised on several occasions, in the House, for example upon asking leave to withdraw the amendment Laing explained that it ‘was the Select Committee's intention to give the House an opportunity to debate these important matters and that has certainly been a success’¹⁰²⁴ and amounted to an important contribution on the part of the Committee.

The need for cross-party support, which the Government asserted was inherent in the legislation, stating in Response to the PCRC, that the ‘proposals set out in the Bill *already require cross-party agreement* for the passing of a dissolution motion, since the threshold has been set at a level which no post-war Government has been able to achieve on its own’,¹⁰²⁵ was indeed borne out in the early General Election of 2017 in which one of the exceptions in clause 2 of the Fixed-term Parliaments Act was used, on 19 April 2017, when the PM’s motion to hold an early general election was definitively passed by 522 votes to 13 – clearly exceeding the required two-thirds majority.¹⁰²⁶ It might have been the PM’s initiative, but without solid Opposition support this would not have been possible. Indeed, the operation of this clause in practice demonstrates the flexibility built in to the legislation along with the constraints of requiring cross-party agreement.

8. The Work of Other Parliamentary Select Committees on the Fixed-Term Parliaments Bill

The Constitution Committee carried out ‘a full inquiry...into the policy and provisions contained in the Bill and... into the legislation on fixed term Parliaments.’¹⁰²⁷ Its subsequent Report criticised the lack of pre-legislative scrutiny¹⁰²⁸ and, in addition to this obvious point, there was a significant amount of duplication between the two ‘constitutional’ committees. This extended beyond the issues discussed to replicate some of the evidence taken and indeed those individuals who were participants in both inquiries. This, arguably, is an area in

¹⁰²³ Laing, HC Deb 24 November 2010, vol 519, col 303

¹⁰²⁴ Laing, HC Deb 24 November 2010, vol 519, col 348

¹⁰²⁵ HMG, *Government response to the report of the Political and Constitutional Reform Committee on the Fixed-term Parliaments Bill* (Cm 7951, 2010) 44 [emphasis added]

¹⁰²⁶ HC Deb 19 April 2017, vol 624, cols 681-712

¹⁰²⁷ Constitution Committee, *Call for Evidence: Fixed-Term Parliaments* (15 July 2010)

¹⁰²⁸ Constitution Committee, *Parliamentary Voting System and Constituencies Bill* (HL 2010-11, 58) 11; and Constitution Committee, *Fixed-term Parliaments Bill*, (HL 2010-11, 69) 71

which joint working in the form of shared evidence sessions would be a more judicious use of witnesses' time. The Constitution Committee Report, however, was published much later than the PCRC Report and, as might have been expected, was used more extensively during the stages of the Bill in the Upper House.¹⁰²⁹

The very specific remit of the House of Lords Delegated Powers and Regulatory Reform Committee of this House of Lords Committee was unlikely to cause any difficulties in terms of overlap of subject matter. For the sake of completeness, however, its Report on the Fixed-Term Parliaments Bill,¹⁰³⁰ is worth a brief mention, particularly as one of its recommendations, on clause 1(5) of the Bill - requiring that a statement setting out the PM's reasons for proposing the change of polling day must be laid before both Houses at the same time as the draft order - was adopted by the Government.¹⁰³¹

There was nothing of particular note in relation to the Joint Committee on Human Rights (JCHR) which 'said that the Bill's provisions did not need to be brought to the attention of either House on human rights grounds'.¹⁰³²

¹⁰²⁹ Constitution Committee, *Parliamentary Voting System and Constituencies Bill* (HL 2010-11, 58)

¹⁰³⁰ Delegated Powers and Regulatory Reform Committee, 10th Report *Government Bills: Fixed-Term Parliaments Bill; Private Member's Bills: Devolution (Time) Bill [HL], Remembrance Sunday (Closure of Shops) Bill [HL]; Torture (Damages) Bill [HL]* (HL 2010-11, 100)

¹⁰³¹ Delegated Powers and Regulatory Reform Committee, *Government Bills: Fixed-Term Parliaments Bill; Private Member's Bills: Devolution (Time) Bill [HL], Remembrance Sunday (Closure of Shops) Bill [HL]; Torture (Damages) Bill [HL]* (HL 2010-11, 100) 3

¹⁰³² HC Deb 1 December 2010, vol 519, col 867

B. Draft Legislation - Pre-legislative Scrutiny of Draft Bills

1. Introduction

1.1. Draft Bills and Pre-legislative Scrutiny

There is 'enormous value in publishing'¹⁰³³a draft Bill to the wider public and stakeholders, and in stark contrast to the legislation discussed above, the Government published, or announced plans for, a number of draft Bills in the extended 2010-12 Parliamentary Session, several of which were constitutionally significant and related, at least in part, to the reform of Parliamentary procedures; for example, Parliamentary Privilege,¹⁰³⁴House of Lords Reform,¹⁰³⁵Recall of Elections.¹⁰³⁶ As expected,¹⁰³⁷the publication of the draft bills was warmly welcomed by the PCRC, stakeholders, and Parliament, to enable 'proper consultation and scrutiny'.¹⁰³⁸Five of the eleven draft Bills placed before Parliament during the extended 2010-12 session were of specific interest to the PCRC; those relating to electoral reform - *Draft Electoral Administration Provisions*, *Further Draft Electoral Administration Provisions* and *Draft Individual Electoral Registration Bill* - and the *Draft Recall of MPs Bill* and *Draft House of Lords Reform Bill*.¹⁰³⁹The scope of these legislative proposals concerned both the election to, and the composition of the Westminster Parliament (Lower and Upper Chambers) and fell clearly within the remit of the PCRC consequently influencing its work schedule.

¹⁰³³ Cabinet Office, *Guide to Making Legislation*, 22.30

¹⁰³⁴ Announced in the Queen's Speech, HC Deb 25 May 2010, vol 510, col 32; HC Deb 26 May 2010, vol 510, col 5WS

¹⁰³⁵ HC Deb 7 June 2010, vol 511, col 48; May 2011 - Cabinet Office published a White Paper and Draft Bill containing proposals for a smaller, reformed House of Lords: *Draft House of Lords Reform Bill* (Cm 8077) >

¹⁰³⁶ HC Deb 17 January 2011, col 525W; 13 December 2011 - Cabinet Office published a draft Bill proposing to introduce a power of recall - Recall of MPs Draft Bill (Cm 8241)

¹⁰³⁷ It being almost universally accepted that pre-legislative scrutiny is objectively a good thing

¹⁰³⁸ Liaison Committee, *Select committee effectiveness, resources and powers* (HC 2012-13, 697-II) Ev w42, 5: PCRC Evidence to Liaison Committee

¹⁰³⁹ Cabinet Office, *Draft electoral administration provisions* (Cm 8150, July 2011) published 13 July; Cabinet Office, *Further draft electoral administration provisions* (Cm 8177, September 2011) published 14 September. Albeit two were fairly straightforward provisions: *Draft Electoral Administration Provisions* to extend the electoral timetable for UK Parliamentary elections from 17 to 25 working days; and *Further Draft Electoral Administration Provisions* clauses to remove the automatic postponement of parish and community council elections in England and Wales that currently occurs when a Parliamentary or European Parliamentary general election falls on the ordinary day for local government elections

Whilst legislative review formed a part of the Committee's core function it was instantly obvious that to, adequately, address several pieces of legislation over a short period of time would require careful planning in order to ensure that other, longer-term and proactive areas of inquiry would not be neglected. The potential for a Select Committee to become mired in technical legislative scrutiny at the expense of more comprehensive scrutiny of Government has been highlighted by Parliamentarians over the years, for example, Oliver Heald voiced concerns about the potential for Select Committees to become 'overburdened' with pre-legislative scrutiny, during a Westminster Hall debate initiated by the (then) future Chair of the PCRC.¹⁰⁴⁰ Former MP Anne Widdecombe described the introduction of pre-legislative scrutiny as '[A]nother limitation to the effectiveness of select committee...the committee can become so bogged down in examination of proposed Bills that it is restricted in the development of its own programme of work and finds its agenda driven by government priorities rather than its own'.¹⁰⁴¹

Thus it is perhaps fortunate that in subsequent years the draft Bills published by Government did not fall within the remit of the PCRC; the sole exception being the *Voting Eligibility (Prisoners) Draft Bill*.¹⁰⁴² During the latter part of the 2010 Parliament, however, a sizable part of the Committee's time was spent on consideration of Government proposals for the registration of lobbyists.¹⁰⁴³

For the purposes of this section of the study, the PCRC's work in relation to draft legislation on Individual Electoral Registration¹⁰⁴⁴ and Recall of MPs¹⁰⁴⁵ is analysed. Both of these Bills dealt with issues of the franchise and representation. This is legislative scrutiny of a different nature to that discussed above¹⁰⁴⁶ as, in relation to these draft Bills, the Committee had the opportunity to undertake what might be described as 'genuine' pre-legislative scrutiny, in

¹⁰⁴⁰ HC Deb 6 January 2004, vol 416, col 5WH

¹⁰⁴¹ Ann Widdecombe, "The Role of an MP: an Opposition view", in Nicholas Baldwin (ed), *Parliament in the 21st Century*, (Politicos, 2005) 81

¹⁰⁴² On this subject the Committee had compiled evidence – PCRC, *Voting by convicted prisoners: Summary of evidence* (HC 2010-12, 776) – discussed above in chapter five.

¹⁰⁴³ Discussed in chapter seven as over-arching 'political reform'

¹⁰⁴⁴ Cabinet Office, *Draft electoral administration provisions* (Cm 8150, July 2011) and *Further Draft Electoral Administration Provisions* (Cm 8117, September 2011)

¹⁰⁴⁵ Draft Bill (Cm 8241)

¹⁰⁴⁶ Fixed-Term Parliaments

that it occurred *before* the legislation commenced its Parliamentary journey. . The Committee's comments and reports were thus published *before* the legislation commenced the Parliamentary process. The Committee's work here acts as a useful foil to the more limited impact it had via legislative scrutiny undertaken at a late stage. In the wider context of it demonstrates the value of enabling proper pre-legislative scrutiny by consultation at the earliest possible stage.

Such analysis of the Committee's work also highlights the inconsistency in the treatment of legislation of constitutional significance on the part of the Coalition Government. As discussed above, some was hastily rushed through, whilst other proposals were published in draft and in some instances specifically provided to Select Committees for pre-legislative scrutiny. The approach taken by Government to the scrutiny of draft bills, was also rather varied, some were sent to Select Committees whilst others were committed to specially convened Joint Committees, one example was House of Lords Reform.¹⁰⁴⁷ The practical experience gained through navigating these issues provided an appropriate context for the PCRC's subsequent inquiry into improving the quality of legislation and enabled it to offer an informed viewpoint that 'there should be a clear, well understood and rational framework for decisions regarding the forum in which pre-legislative scrutiny is conducted, not least because of the implications for the workload and role of select committees'.¹⁰⁴⁸

¹⁰⁴⁷ Discussed in chapter five

¹⁰⁴⁸ Liaison Committee, *Select committee effectiveness, resources and powers* (HC 2012-13, 697-II) PCRC Ev w42, 5

2. Pre-legislative Scrutiny of Draft Legislation on Individual Electoral Registration (IER) and Electoral Administration

The Coalition Government's commitment to 'reduce electoral fraud by speeding up the implementation of individual electoral registration'¹⁰⁴⁹ provided the first opportunity, for the PCRC to undertake timely pre-legislative scrutiny and thus to have a tangible, and meaningful, impact upon the policy. The Chair described the interaction between the Minister and the Committee, and the approach adopted by Government which, in this context, involved both the Committee and the House of Commons in deliberations on the Bill, as 'an exemplar of good practice'.¹⁰⁵⁰ It was 'because the Select Committee managed to clear away a lot of the undergrowth—a lot of the detail—during its close discussions with the Government that the real, strong political issues that should be debated on the Floor of the House are being so debated'.¹⁰⁵¹

The *Electoral Registration and Administration Bill* (now Act) 2013 'made provision for a legislative framework for the introduction of a new system of individual electoral registration under which electors would be registered individually instead of by household'.¹⁰⁵² As introduced in the Commons on 10 May 2012, it succeeded in combining the various related draft proposals into a single, relatively, coherent piece of legislation. As it was classified as 'constitutional' legislation, the *Electoral Registration and Administration Bill* had its Committee Stage on the Floor of the House.

2.1. Background to Electoral Reform¹⁰⁵³

As a concept, Individual Electoral Registration (IER) rested on a platform of cross-party support, having been introduced initially by the last Labour government, in the *Political*

¹⁰⁴⁹ HMG, *The Coalition Agreement: Our Programme for Government* (May 2010) 27

¹⁰⁵⁰ HC Deb 23 May 2012, vol 545, col 1173

¹⁰⁵¹ HC Deb 25 June 2012, vol 547, col 91

¹⁰⁵² House of Commons Library SN/PC/06359, *Electoral Registration and Administration Bill 2012-13: progress of the Bill* (31 January 2013) 1

¹⁰⁵³ For detail on the background to the legislation see House of Commons Library Research Paper 12/26, *Electoral Registration and Administration Bill: Bill No 6 2010-13* (17 May 2012) and House of Commons Library SN/PC/06359, *Electoral Registration and Administration Bill 2012-13: progress of the Bill* (31 January 2013)

Parties and Elections Act 2009. Changes to the original proposals included ‘speeding up’ the timetable for the introduction of IER. The opportunity also existed to learn from the domestic experience of implementation as IER had been implemented in Northern Ireland in 2002 with a system which required people registering to vote to provide their personal details, including a National Insurance number. The impetus, however, for introducing IER in the context of Northern Ireland, was rather different as electoral fraud had been a long-standing problem there.¹⁰⁵⁴

3. Impact and Influence of the PCRC

3.1. Overview

The Committee had a distinct and tangible impact in terms of this legislation. In addition to frequent references made to the PCRC during debates in the House, its evidence gathering, combined with the influence of the Committee’s Report, which was significantly bolstered by a co-operative working style with key stakeholders, such as the Electoral Commission, led directly to a number of important amendments. As such, the work of the PCRC in this regard is an excellent example of constructive backbench influence on Government policy and cross-party co-operation, facilitated by the structure of a non-partisan Committee, was particularly important in this context as the Opposition, whilst seemingly in agreement with the general principles, was not content with the specifics, such as the timetable for introducing IER.

At Second Reading, the PCRC Report and Government’s Response were tagged as relevant documents¹⁰⁵⁵ and during the debate there were 15 references made to the work of the PCRC in undertaking pre-legislative scrutiny of this Bill. Several Committee members played an active part in the debate and the Committee’s work was praised by a number of speakers, on both sides of the House. Most significantly, when introducing the Bill, the Minister for Political

¹⁰⁵⁴ *Electoral Fraud (Northern Ireland) Act 2002* which implemented proposals in a 2001 White Paper (Combating Electoral Fraud in Northern Ireland)

¹⁰⁵⁵ HC Deb 23 May 2012, vol 545, cols 1172 – 1252; Relevant documents: PCRC, *Individual Electoral Registration and Electoral Administration* (HC 2010-12, 1463) and the Government’s response - HMG, *Government Response to pre-legislative scrutiny and public consultation on Individual Electoral Registration and amendments to Electoral Administration law*, (Cmnd 8245, 2012)

and Constitutional Reform, made no fewer than *four* references to the Committee's Report commenting that the 'non-partisan efforts to determine a better Bill and to make better proposals' had led to the adoption of some by Government¹⁰⁵⁶ adding that the Government had 'since accepted more such proposals'.¹⁰⁵⁷ During the debates on the Bill the Committee was much praised by members from both sides of the House and by the Minister, for doing a 'superb job in the report that the Committee produced'.¹⁰⁵⁸ Tribute was paid to the PCRC 'under its excellent Chair...which took evidence and produced a consensual report containing strong recommendations'.¹⁰⁵⁹ Another Minister commented that '[T]he Bill is much better for their comments and the care they took over their work....That shows the value that pre-legislative scrutiny can add to the development of legislation'.¹⁰⁶⁰ Additionally, in the Lords, during a 'motion to take note' of Government policy on electoral registration, the PCRC's work was referred to on six separate occasions¹⁰⁶¹ and was 'tagged' as a relevant document during an Opposition Day debate on Individual Voter Registration, during which there were 17 references to the PCRC.¹⁰⁶²

The impact the PCRC had upon the Electoral Legislation is demonstrable evidence of the advantage of publishing legislation in draft, allowing time for effective pre-legislative scrutiny and genuine engagement with Parliament and external stakeholders. Whilst the Parliamentary time 'saved' through such effective early scrutiny cannot be accurately calculated a clear case can be made that if similar pre-legislative scrutiny were to be adopted more widely the cumulative impact would be significant. As mentioned above, the Chair has frequently cited the Committee's interaction on electoral registration as an 'exemplar of good practice'; a view which can be substantiated by reference to 'a number of significant changes' which the Committee helped to bring about. By way of contrast 'on the AV referendum and Parliamentary Boundary Commissions there was virtually no consultation with the Committee and I don't think there is anyone out there from either point of view that would argue that it

¹⁰⁵⁶ HC Deb 23 May 2012, vol 545, col 1187 citing Allen's comments from HC Deb 16 January 2012, vol 538, col 508

¹⁰⁵⁷ HC Deb 23 May 2012, vol 545, col 1187

¹⁰⁵⁸ HC Deb 25 June 2012, vol 547, col 107

¹⁰⁵⁹ HC Deb 27 June 2012, vol 547, col 393

¹⁰⁶⁰ HC Deb 27 June 2012, vol 547, col 383

¹⁰⁶¹ HL Deb 12 January 2012, vol 734, cols 229-267

¹⁰⁶² HC Deb 16 January 2012, vol 538, cols 475-531

has been a roaring success. We are not a guarantee of success but I come back to this concept of using the House of Commons to its fullest extent'.¹⁰⁶³

3.2. Practical and Logistical Recommendations – Tangible Influence by the PCRC

The Minister specifically sought the Committee's opinion on two timing matters which were not contained in the draft: first, retaining the deadline for postal vote applications at eleven days before polling day (recommended by the Committee¹⁰⁶⁴ and accepted by Government); and secondly, the deadline for appointing polling and counting agents by candidates (on which the Committee did not make a recommendation).¹⁰⁶⁵ The PCRC's recommendation that the Electoral Commission's data matching pilot evaluations were published in time to inform the Second Reading debate was met. The Government Response indicated that the evaluations would be completed by March 2012 and thus available to Parliament to 'inform its deliberations on IER'.¹⁰⁶⁶ The Committee's recommendation that the funding provided to Local Authorities (for the transition to IER) would be ring-fenced was accepted.¹⁰⁶⁷

The suggestion that the Electoral Commission be given heightened powers, however, was less favourably received;¹⁰⁶⁸ Government thought this would be a 'significant change in the role of the EC' and saw no need for the current system to change.¹⁰⁶⁹

¹⁰⁶³ Political and Constitutional Reform Committee, *Ensuring standards in the quality of legislation*, (HC 2013–14, 85) (Incorporating HC 74-i to vii, Session 2012–13) Vol I, Q79

¹⁰⁶⁴ Political and Constitutional Reform Committee, *Individual Electoral Registration and Electoral Administration* (HC 2010–12, 1463-I) 93

¹⁰⁶⁵ Letter from Mark Harper, Minister for Political and Constitutional Reform, to Graham Allen, Chair of the PCRC, *Individual Electoral Registration*, Written Evidence (14 July 2011)

¹⁰⁶⁶ HMG, *Government Response to pre-legislative scrutiny and public consultation on Individual Electoral Registration and amendments to Electoral Administration law*, (Cmnd 8245, 2012) 99; Commons Second Reading was on 23 May 2012

¹⁰⁶⁷ PCRC, *Individual Electoral Registration and Electoral Administration* (HC 2010–12, 1463) 78; Cabinet Office departmental expenditure classified the Electoral Registration Transformation Programme as one of the top three major projects with a projected spend of £26m in 2013/14 and a whole life cost of £105m; accessed 30 August 2013 <<http://transparency.number10.gov.uk/assets/client/pdf/co-expenditure.pdf>>

¹⁰⁶⁸ PCRC, *Individual Electoral Registration and Electoral Administration* (HC 2010–12, 1463) 77

¹⁰⁶⁹ HMG, *Government Response to pre-legislative scrutiny and public consultation on Individual Electoral Registration and amendments to Electoral Administration law*, (Cmnd 8245, 2012) 87

3.3. Substantive Proposals – Further Tangible Influence by the PCRC

The tangible impact of the PCRC extended far beyond logistical amendments; its recommendations also resulted in significant change to the substance of the proposals. A number of pivotal recommendations which led to amendment are set out below:

- a. The recommendation that the electoral registers, used for the next boundary review, should be as they were ‘on or before election day in May 2015’ rather than in December 2015¹⁰⁷⁰ and the suggestion that Government should ‘reconsider its decision not to hold a full household canvass in 2014.’¹⁰⁷¹ Together these led to what was described by the Minister as the ‘first major change’ to the Bill – the decision to ‘delay the timing of an annual canvass’ from autumn 2013 to spring 2014.¹⁰⁷²
- b. The recommendation that sharing of information between local authorities was improved to identify duplicate entries¹⁰⁷³ which was addressed by the ‘second major change’ to the Bill simplifying the system by using data matching to mean that when an individual’s name and address match and the ERO was confident they were a ‘genuine person’ they would be confirmed on the register without having to make an individual application to register.¹⁰⁷⁴
- c. A concern that it may be made ‘too easy for people to opt out’ from a civic or public ‘duty’ to vote.¹⁰⁷⁵ This was reflected in the third major change to the Bill – the removal of the ‘opt-out provision’ which was explicitly attributed to arguments made by the PCRC (along with the Electoral Commission and Members of the House of Commons).¹⁰⁷⁶

¹⁰⁷⁰ PCRC, *Individual Electoral Registration and Electoral Administration* (HC 2010-12, 1463) 33

¹⁰⁷¹ *ibid* 59

¹⁰⁷² HC Deb 23 May 2012, vol 545, cols 1179-1182

¹⁰⁷³ PCRC, *Individual Electoral Registration and Electoral Administration* (HC 2010-12, 1463) 49; This was a compromise designed to ensure that the register would be as up to date as possible before the transition to IER whilst avoiding the expense of holding an extra canvass (in 2014).

¹⁰⁷⁴ Mark Harper, Minister for Political and Constitutional Reform, HC Deb 23 May 2012, vol 545, cols 1179-1182

¹⁰⁷⁵ PCRC, *Individual Electoral Registration and Electoral Administration* (HC 2010-12, 1463) 23

¹⁰⁷⁶ Mark Harper, Minister for Political and Constitutional Reform, HC Deb 23 May 2012, vol 545, cols 1179-1182

- d. The recommendation that it should, initially, at least, be an offence to fail to complete a voter registration form when asked to do so.¹⁰⁷⁷ Here, again, an obvious impact can be identified, with the fourth ‘major change’ being the introduction of a civil penalty upon an individual who has been required to make an application fails to do so. The Government had considered introducing a new criminal offence but decided against as it was not ‘appropriate to criminalise people who simply did not register to vote’.¹⁰⁷⁸

Two other major recommendations - that the edited register should be abolished;¹⁰⁷⁹ and that the Recess Elections Act 1975 ‘should be amended to allow writs to be issued in recess for any vacancies that arise where a Member effectively resigns their seat’¹⁰⁸⁰- however, met with a firmly negative response from Government.

3.4. Pilot Scheme: Members’ Explanatory Notes and Amendments

An interesting legislative innovation – which stemmed from a recommendation by the Modernisation Committee¹⁰⁸¹– accompanied the *Electoral Registration and Administration Bill*; this was the idea of members accompanying their proposed amendments with ‘explanatory notes’ to assist Members in preparing for debate by providing a brief explanation of the intended effect of a proposed amendment. The Bill was one of two pieces of legislation selected by the Leader of the House of Commons and the Procedure Committee to be used in a pilot scheme during the 2012-13 session.¹⁰⁸² The Procedure Committee subsequently recommended that explanatory statements should accompany amendments tabled¹⁰⁸³ and Government committed itself to full participation in the pilot.¹⁰⁸⁴ For the *Electoral*

¹⁰⁷⁷ PCRC, *Individual Electoral Registration and Electoral Administration* (HC 2010-12, 1463) 28

¹⁰⁷⁸ Mark Harper, Minister for Political and Constitutional Reform, HC Deb 23 May 2012, vol 545, cols 1179-1182

¹⁰⁷⁹ *ibid* 43

¹⁰⁸⁰ PCRC, *Individual Electoral Registration and Electoral Administration* (HC 2010-12, 1463) 94

¹⁰⁸¹ Modernisation Committee, *The Legislative Process* (HC 2005-06, 1097)

¹⁰⁸² The other being the *Small Charitable Donations Bill*

¹⁰⁸³ Procedure Committee, *Improving the effectiveness of parliamentary scrutiny: (a) Select committee amendments; (b) Explanatory statements on amendments; (c) Written parliamentary questions* (HC 2010-11, 800)

¹⁰⁸⁴ HC Deb 23 May 2012, vol 545, col 72WS

Registration and Administration Bill the pilot covered both the Committee Stage and any proceedings on consideration.

The PCRC played a leading role, for example, by providing clear explanatory statements to the proposed amendment tabled by its members. The Minister, noted that, in this regard, '[A]s we would expect from a Chair of a Select Committee. He [Allen] offers an exemplar of good parliamentary practice'.¹⁰⁸⁵ In other amendments tabled by Eleanor Laing (separately from her Committee position) the practice of providing explanatory statements was continued.¹⁰⁸⁶ The role PCRC members played in relation to tabling amendments with accompanying explanatory notes, has had a wider impact than that of instigating changes to this particular legislation as following the pilot exercise, there was a formal evaluation, proposed by the Leader of the House, 'with an initial evaluation conducted by the House Service which the Procedure Committee will then use as the basis for a report on the outcome, together with evidence from elsewhere, including the Government's views'.¹⁰⁸⁷

Following the precedent set during the legislative progress of the *Fixed-term Parliaments Act*¹⁰⁸⁸ in this instance the PCRC Members also did not intend to press these amendments to a vote¹⁰⁸⁹ rather they were 'probing' amendments, for example, with the aim of making voters fully aware of the edited register. This was apparent from the accompanying 'crystal clear' explanatory statement that '[T]he amendment is intended to ensure that it is clear to people who are invited to apply for registration that the edited register may be sold, and to ensure that people know how to opt out of the edited register'.¹⁰⁹⁰ This amendment was also a manifestation of the PCRC recommendation that the edited register be abolished, which was

¹⁰⁸⁵ HC Deb 25 June 2012, vol 547, col 106 (with regards the explanatory statements accompanying the amendments tabled by Committee members)

¹⁰⁸⁶ The Procedure Committee reviewed the pilots and recommended such explanatory statements for amendments 'become an accepted norm of the legislative process' (see Procedure Committee, *Explanatory statements on amendments* (HC 2012-13, 979) 20), a view 'shared' by the Leader of the House of Commons (Procedure Committee, *Government response to the Committee's Fourth and Fifth Reports, on Explanatory statements on amendments and Statements by Members who answer on behalf of statutory bodies*, Leader of the House of Commons, 3 May 2013)

¹⁰⁸⁷ HC Deb 23 May 2012, vol 545, col 73WS

¹⁰⁸⁸ Discussed above

¹⁰⁸⁹ HC Deb 25 June 2012, vol 547, col 92

¹⁰⁹⁰ HC Deb 25 June 2012, vol 547, col 92

supported by the Electoral Commission but not accepted by Government.¹⁰⁹¹ The tabling of this amendment provided an opportunity for the Minister to publicly defend the decision to retain the edited register in part due to 'significant wider social and economic benefits' and to highlight that research carried out by the previous Labour government indicated that, of consultation responses received, the vast majority - 7,447 of 7,600 - favoured retaining the edited register.¹⁰⁹² In the Upper Chamber on the second day of the Committee stage, echoing recommendations made by the PCRC, Lord Norton (a former Chair of the Constitution Committee) moved an amendment which, if agreed to, would abolish the edited register.¹⁰⁹³

¹⁰⁹¹ Discussed above - PCRC, *Individual Electoral Registration and Electoral Administration* (HC 2010-12, 1463)

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¹⁰⁹² HC Deb 25 June 2012, vol 547, col 102

¹⁰⁹³ Noting that the PCRC, the Electoral Commission and the Association of Electoral Administrators had all called for the abolition of the edited register; HL Deb 14 January 2013, vol 742, col 578

4. Pre-legislative Scrutiny of the Draft Bill on the Recall of MPs¹⁰⁹⁴

Recall is a term used to describe a process whereby the electorate can petition to trigger a vote between scheduled elections on the suitability of an existing elected representative to continue in office.¹⁰⁹⁵

4.1. Background

Prior to the *Recall of MPs Act 2015*, which received Royal Assent on 26 March 2015, there was no recall mechanism in the UK.¹⁰⁹⁶ It has been acknowledged that to introduce such a system would be entirely novel for our political landscape.¹⁰⁹⁷ However, the recent scandal over Parliamentary expenses was also without precedent and fundamentally affected the reputation and standing of the institution of Parliament. Introducing a power of recall of MPs was a commitment for each of the three main political parties in their 2010 Election Manifestos. The Conservatives pledged to ‘introduce a power of ‘recall’ to allow electors to kick out MPs, a power that will be triggered by proven serious wrongdoing. And we will introduce a Parliamentary Privilege Act¹⁰⁹⁸ to make clear that privilege cannot be abused by MPs to evade justice’.¹⁰⁹⁹ The Liberal Democrats suggested that they ‘would introduce a recall system so that constituents could force a by-election for any MP found responsible for serious wrongdoing’.¹¹⁰⁰ Labour committed to a more limited form of recall relating specifically to ‘financial misconduct’, which stated that ‘MPs who are found responsible for financial

¹⁰⁹⁴ PCRC, *Recall of MPs* (HC 2012-13, 373)

¹⁰⁹⁵ See House of Commons Library SN/PC/05089, *Recall Elections* (12 September 2014)

¹⁰⁹⁶ The UK is not unusual in this, recall is used in a relatively small number of countries – for an overview see SN/PC/05089

¹⁰⁹⁷ PCRC, *Recall of MPs: Government Response to the Committee’s First Report of Session 2012-13* (HC 2012-13, 646) 70

¹⁰⁹⁸ Government published a Green Paper and Consultation Document on 26 April 2012 – HMG, *Parliamentary Privilege* (Cmnd 8318). The Consultation ended on 30 September 2012.

A Joint Committee on Parliamentary Privilege was appointed by the House of Commons (3 December 2012) and the House of Lords (9 January 2013) to consider the Green Paper. The Commons members of the Joint Committee included two of the PCRC Committee – Tristram Hunt and Eleanor Laing

The Joint Committee was due to report on 25 April 2013 but on 27 March 2013 received an extension until 28 June 2013. The Joint Committee’s Report was published on 3 July 2013 and was opposed to codification of parliamentary privilege. Joint Committee on Parliamentary Privilege, *Parliamentary Privilege*, (2012-13 (HL 30, HC 100)

¹⁰⁹⁹ Conservative Party, *Invitation to Join the Government of Britain*, 2010, 65

¹¹⁰⁰ Liberal Democrats, *Manifesto 2010, Change that works for you, Building a Fairer Britain*, 89 – they also claimed they were ‘campaigning for this right of recall to be introduced to the European Parliament too’ 89

misconduct will be subject to a right of recall if Parliament itself has failed to act against them'.¹¹⁰¹In order to fulfil a Coalition Government commitment to introduce a power of recall,¹¹⁰²the Government published a White Paper and Draft Bill in December 2011.¹¹⁰³ The PCRC was invited¹¹⁰⁴to carry out pre-legislative scrutiny of the Draft Bill and issued a call for evidence two days later.¹¹⁰⁵

4.2. The Work of the PCRC

During the four evidence sessions¹¹⁰⁶to examine the Draft Bill the PCRC took evidence from a comprehensive and balanced range of witnesses, which included Parliamentarians who had campaigned for 'real'¹¹⁰⁷recall (rather than the Government's proposals, which some considered 'a pretence...instead of handing power down to voters...hands power up to a parliamentary committee')¹¹⁰⁸, academics with expertise in electoral systems in other jurisdictions which use recall, campaign groups, the Chair of the Standards and Privileges Committee, senior House officials, and a representative of the Association of Electoral Administrators (the body which would conduct recall petitions). The Committee's Inquiry concluded with an oral evidence session with the DPM and the Minister for Political and Constitutional Reform.¹¹⁰⁹ The apparent willingness of witnesses to attend, at what was fairly short notice, can be seen as a positive reflection of the Committee's status in the external and academic world.

The Committee's Report was strident in its criticism of the specific proposals in the draft Bill.¹¹¹⁰It gave voice to fears that, rather than achieving the intended purpose of restoring faith in the political process after the expenses scandal, the restricted form of recall proposed

¹¹⁰¹ The Labour Party Manifesto 2010, *A Future Fair for All*, 9:2

¹¹⁰² HMG, *The Coalition: our programme for government* (May 2010) 27

¹¹⁰³ Jointly published by the DPM and Minister for Political and Constitutional Reform on 13 December 2011: HMG (Cm 8241)

¹¹⁰⁴ HC Deb, 13 December 2011, vol 537, col 92WS

¹¹⁰⁵ PCRC News release, 'Call for evidence: Recall of MPs' (15 December 2011)

¹¹⁰⁶ From January to April

¹¹⁰⁷ PCRC, *Recall of MPs* (HC 2012-13, 373) Ev1, Q2

¹¹⁰⁸ *ibid*, Ev2, Q2

¹¹⁰⁹ 19 April 2012

¹¹¹⁰ PCRC, *Recall of MPs* (HC 2012-13, 373)

in the draft Bill could instead actually reduce public confidence in politics by creating expectations that are not fulfilled. The Report went so far as to recommend that the Government should 'abandon its plans' to introduce a power of recall. It considered introducing recall a poor use of limited parliamentary time.¹¹¹¹

It is of particular note than whilst the Committee was very clear in its stance that the Government had 'not made the case for introducing recall'¹¹¹² and that there was not a gap in the existing Parliamentary disciplinary procedures, the recommendations made by the Committee were supported by evidence and explanation, for example, 'the aftermath of the expenses scandal has shown that MPs can be, and are, removed by current processes as quickly as they would be by recall'.¹¹¹³ The Report drew heavily on evidence given by two backbench Conservative MPs¹¹¹⁴ who explained that the power of recall in the draft Bill would be ineffective and described it as a 'deeply flawed proposal'.¹¹¹⁵ One of whom indicated, in response to questioning by the Committee, that he was not aware of anyone, aside from the Government who supported the draft Bill.¹¹¹⁶ Both these MPs had proposed the introduction of recall procedures via Private Members Bills; Zac Goldsmith, had introduced the Recall of Elected Representatives Bill,¹¹¹⁷ and Douglas Carswell, had in a previous session, sponsored a Ten Minute Rule Bill, which did not progress beyond first reading.¹¹¹⁸

In compiling its Report the Committee displayed a now customary independence of thought – the recommendations did not simply reflect or echo the views of those from whom evidence was sought but rather analysed the evidence received and utilised it to contribute to an independent and informed review. A key example could be found in the Committee's view that, despite the strong opinions of a number of influential witnesses, it 'cannot support a

¹¹¹¹ *ibid* 89

¹¹¹² *ibid* 76

¹¹¹³ *ibid* 76

¹¹¹⁴ Zac Goldsmith and Douglas Carswell; see also: BBC, 'Recall plan for MPs 'deeply flawed'' (19 January 2012); Ben Quinn, 'Zac Goldsmith attacks MP recall bill' *The Guardian* (19 January 2012); and Alex Stevenson, 'Tory MPs pour scorn on coalition's 'fake' recall proposals' (19 January 2012)

¹¹¹⁵ PCRC, *Recall of MPs* (HC 2012–13, 373) Ev1, Q1

¹¹¹⁶ *ibid* Ev 10, Q23

¹¹¹⁷ *Recall of Elected Representatives Bill 2012-13*

¹¹¹⁸ *Parliamentary Elections (Recall and Primaries) Bill 2008-09*

system of full recall’¹¹¹⁹ – a conclusion that was welcomed by the Government.¹¹²⁰ Evidence was also given before the Committee which described the proposals as ‘tick-box consultation’ aimed entirely at meeting a manifesto commitment¹¹²¹ or to fulfil the Coalition’s commitment to ‘bring forward early legislation to introduce a power of recall, allowing voters to force a by-election where an MP was found to have engaged in serious wrongdoing and having had a petition calling for a by-election signed by 10% of his or her constituents’.¹¹²²

4.3. Impact and Influence of the PCRC - Key Recommendations and Government Response

The response of Government was, as one would expect, favourable towards those sections of the Committee’s report which welcomed or endorsed an aspect of the draft Bill – essentially giving the approval of the Committee. An obvious example, was the ‘inclusion of lay members on the new Standards Committee’ which would strengthen and ‘arguably further legitimise[s]’ it.¹¹²³ Similarly when the recommendation made by the Committee was one which was unlikely to be controversial the Government had little difficulty in agreeing with, and supporting the Committee’s suggestions, for example, with regards the idea that the Electoral Commission should be involved in testing ‘the clarity of the wording of the petition, and of the accompanying information about the process’¹¹²⁴ and the obvious point that ‘differences of opinion about what constitutes the proper role of an MP should not be allowed to trigger recall petitions’.¹¹²⁵ The discussion below, however, focuses on those recommendations which called for action or change, rather than those which endorse the Government’s proposals.

Where the PCRC disagreed with a proposal it demonstrated a constructive approach, suggesting an alternative option or a solution to what it perceived to be a problem. A clear

¹¹¹⁹ PCRC, *Recall of MPs* (HC 2012–13, 373) 84

¹¹²⁰ PCRC, *Recall of MPs: Government Response to the Committee’s First Report of Session 2012-13* (HC 2012-13, 646) 63

¹¹²¹ PCRC, *Recall of MPs* (HC 2012–13, 373) Ev 10, Q24

¹¹²² See above note HMG, *The Coalition: our programme for government* (May 2010) 27; *Conservative Liberal Democrat coalition negotiations – Agreements reached* (11 May 2010) 6 ‘political reform’, p3

¹¹²³ PCRC, *Recall of MPs* (HC 2012–13, 373) 26

¹¹²⁴ PCRC, *Recall of MPs* (HC 2012–13, 373) 56 and Political and Constitutional Reform Committee, *Recall of MPs: Government Response to the Committee’s First Report of Session 2012-13* (HC 2012-13, 646) 49

¹¹²⁵ PCRC, *Recall of MPs* (HC 2012–13, 373) 83

example, was the Committee's recommendation that 'for the purposes of the first trigger of a custodial sentence of 12 months or less, the Government change its decision not to take account of the motivation of the MP in committing the offence' and suggests instead that it could be for 'the House itself to decide whether there should be an exemption from a recall petition in a particular instance because of the political nature of the crime.'¹¹²⁶ One particularly important aspect of the draft Bill related to the question of defining 'serious wrongdoing'.¹¹²⁷ The PCRC acknowledged that it understood why the Government did not want to define this phrase but noted that there was a 'pressing need' to provide an 'indication of what constitutes serious wrongdoing, to facilitate the work of the Committee on Standards and Privileges'.¹¹²⁸ The Committee's Report explained that it was 'not clear from the draft Bill and White Paper whether the Government intends serious wrongdoing to be restricted specifically to breaches of the code of conduct for MPs and its associated rules, as the Parliamentary Commissioner for Standards suggested to us'.¹¹²⁹ The suggestion to restrict 'wrongdoing' to a breach of the Code of Conduct for MPs met with a less than effusive response by Government. The Government response acknowledged that there were 'mixed views' on the so-called 'second trigger' – of 'serious wrongdoing' – and offered to 'consider further' the PCRC's views, alongside others, 'in order to advance the policy'.¹¹³⁰ In February 2013, the DPM indicated that the Government would work further with the Committee on Standards and the Parliamentary Commissioner on Standards 'to ensure a workable process around trigger two'.¹¹³¹

The Government's response to the PCRC's recommendations around the conduct of the recall petition was, however, overwhelmingly positive, for example, accepting that 'the Committee has presented a case for the larger and more rural constituencies to have more than one designated location'.¹¹³² The DPM stated in correspondence with the Chair of the PCRC that

¹¹²⁶ PCRC, *Recall of MPs* (HC 2012–13, 373) 18

¹¹²⁷ Supported by evidence received from the Clerk of the House was that it was correct not to define 'serious wrongdoing' in the Bill – PCRC, *Recall of MPs* (HC 2012–13, 373) Ev 60

¹¹²⁸ PCRC, *Recall of MPs* (HC 2012–13, 373) 30

¹¹²⁹ *ibid* 36

¹¹³⁰ PCRC, *Recall of MPs: Government Response to the Committee's First Report of Session 2012-13* (HC 2010-12, 646) 23-24

¹¹³¹ Letter from DPM to Chair of PCRC, February 2013

¹¹³² PCRC, *Recall of MPs: Government Response to the Committee's First Report of Session 2012-13* (HC 2012-13, 646) 28

the Government was 'refining the petition process in light of the Committee's proposals'.¹¹³³ This was brought about by the evidence base provided by the Committee, specifically in terms of 'witnesses who felt that participation might be impeded, especially in the geographically larger constituencies, if only one location was available'.¹¹³⁴ It demonstrates the substantive and tangible value which the Committee added in relation to collecting evidence.¹¹³⁵ The Committee's effectiveness in this regard is highlighted further in that, in this instance, the organisations with whom the Government consulted on the changes recommended by the PCRC were those same organisations from whom the Committee had taken evidence, for example, the Association of Electoral Administrators and the Electoral Commission.

Additional recommendations in the Report which appeared to have met with, at least partial, acceptance related to the recommendation that postal voters be sent 'clear accompanying instructions and information about the purpose' of the recall petition to avoid appearing to 'solicit' signatures.¹¹³⁶ There appeared to be a genuine acceptance on the part of Government that providing such guidance might mitigate the risk of being seen to solicit signatures and a commitment to further consultation on this point.¹¹³⁷ Some significant changes suggested by the PCRC were not accepted by the Government¹¹³⁸ but there was a commitment to further consideration and/or consultation with regards the inclusion of Henry VIII powers in the Draft Bill¹¹³⁹ and the regulatory role (in the context of recall) for the returning officers and the Electoral Commission.¹¹⁴⁰

Despite the Report being overtly critical of the Government proposals and calling for them to be abandoned, the constructive style which the PCRC adopted throughout was still evident,

¹¹³³ Letter from DPM to Chair of PCRC, February 2013

¹¹³⁴ PCRC, *Recall of MPs* (HC 2012–13, 373) 27

¹¹³⁵ Discussed above - chapter five

¹¹³⁶ PCRC, *Recall of MPs* (HC 2012–13, 373) 46

¹¹³⁷ PCRC, *Recall of MPs: Government Response to the Committee's First Report of Session 2012-13* (HC 2012-13, 646) 35-37

¹¹³⁸ For example, the Committee cannot claim success in terms of the most important recommendations: raising the threshold from 10% to (at least) 20% (para 63) or its call that the legislation be abandoned.

¹¹³⁹ PCRC, *Recall of MPs: Government Response to the Committee's First Report of Session 2012-13* (HC 2012-13, 646) 50-51

¹¹⁴⁰ *ibid* 52-53

not merely highlighting concerns but attempting to suggest additional solutions. The political factors underpinning the recall legislation were acknowledged by the Committee which recognised 'that the Government may be unwilling to discard a pledge made in the Coalition Agreement' and so made 'some specific recommendations for improving the recall process if the Government decides to proceed with its proposals'.¹¹⁴¹ The Government response to the Committee's pre-legislative scrutiny Report and later comments by the Minister, welcoming 'the Committee's thorough consideration of the proposals' and accepting 'many of their recommendations, particularly on the conduct of the recall petition'¹¹⁴² signalled that the detailed scrutiny undertaken by the Committee was of value to Government and to political reform more widely. In the Government Response it was explicitly stated that:

The proposals set out in the White paper were intended to facilitate a wide debate on the best model for a recall mechanism and the variety of responses received by the Committee during the pre-legislative process has certainly satisfied that intention.¹¹⁴³

By providing an 'alternative' even when producing a Report which is entirely at odds with the Government's intentions, the Committee thus retained some ability to influence and impact. This pragmatic approach lends itself to providing an excellent example of 'best practice'.

4.4. Limitations of Select Committee Influence - Political Pressures

This particular matter, with its political underpinning, also serves to demonstrate that, despite the constructive approach adopted by the Committee, the political realities ensured that its influence would necessarily be limited. The Coalition Government restated its commitment to recall in the Mid-Term Review.¹¹⁴⁴ The subject matter of this inquiry, particularly when considered alongside the related measures in the *Lobbying Bill*, with the aim to 'restore public

¹¹⁴¹ PCRC News Release, 'Committee criticises Government's proposals to introduce a power of recall' (28 June 2012)

¹¹⁴² PCRC, *Introducing a statutory register of lobbyists: Government Response to the Committee's Second Report of Session 2012-13*, (HC 2013-14, 593) Appendix 1: Letter of 17 July 2013 from Chloe Smith, Minister for Political and Constitutional Reform to the Chair of the PCRC

¹¹⁴³ PCRC, *Recall of MPs: Government Response to the Committee's First Report of Session 2012-13* (HC 2012-13, 646) 69

¹¹⁴⁴ HMG, *The Coalition: together in the national interest* (January 2013) 39

trust in the political process and ensure that those who wield power are accountable to the people who they serve'¹¹⁴⁵ is an apt reminder of Westminster politics and a tangible example of political pressures surpassing well-founded and widely supported recommendations made by a Parliamentary Committee. More than anything such instances demonstrate the difficulties Select Committees face in influencing the Government when other, external, pressures exist; in this particular context the Manifesto and Coalition Agreement pledges on an issue which also attracted cross-party support (from Her Majesty's Opposition).

It thus appears to be the case that minor recommendations in Select Committee Reports are significantly more likely to be accepted and adopted by the Government. When a Committee has been overtly critical and suggested abandoning an idea or policy proposal its recommendations have met with short shrift.

4.5. Wider Impact and Influence of the Committee's Report

During the DPM's first appearance before the Liaison Committee (which included the Chair of the PCRC) in February 2013, the PCRC Report on Recall was referred to by the Chair of the Standards Committee, Kevin Barron MP¹¹⁴⁶ (who had given evidence at the second of the PCRC's oral evidence sessions during its inquiry).¹¹⁴⁷ The Committee's Report also received a reasonable amount of media coverage. It was first picked up by The Guardian's 'Politics Live' commentary, the BBC and The Huffington Post.¹¹⁴⁸ Following the resignation of the Conservative Whip, Patrick Mercer on 30 May 2013, the recall debate was re-ignited.¹¹⁴⁹ The press again picked up on the PCRC Report which raised concerns about the recall proposals, suggesting they would be hard to implement.¹¹⁵⁰

¹¹⁴⁵ PCRC, *Introducing a statutory register of lobbyists: Government Response to the Committee's Second Report of Session 2012–13*, (HC 2013-14, 593) Appendix 1: Letter of 17 July 2013 from Chloe Smith, Minister for Political and Constitutional Reform to the Chair of the PCRC

¹¹⁴⁶ Liaison Committee, *Evidence from the Deputy Prime Minister*, HC 958-i and -ii, Q70

¹¹⁴⁷ Thursday 26 January 2012

¹¹⁴⁸ Andrew Sparrow, 'Politics Live' (*The Guardian*, 28 June 2012)

<<http://www.guardian.co.uk/politics/blog/2012/jun/28/ed-miliband-unite-politics-live-blog>> accessed on 8 July 2012; BBC News, 'Ditch plans for power to sack MPs, government urged' (28 June 2012); 'Recall election plans too weak and should be abandoned, say MPs' (*Huffington Post*, 28 June 2012)

¹¹⁴⁹ As was the related discussion regarding the introduction of a statutory register of lobbyists

¹¹⁵⁰ Holly Watt, 'Cash for questions: two years and £130,000 before disgraced MP can be voted out', *Daily Telegraph* (31 May 2013)

4.6. Departmental Business Plan

The Cabinet Office Departmental Business Plan included a commitment to publish a response to the report of the PCRC on the draft *Recall of MPs Bill* with a scheduled end date of September 2012¹¹⁵¹ and the initial Government Response was, in this instance, received within the conventional time frame of two months.¹¹⁵² It was published as the Committee's Second Special Report of Session 2012–13.¹¹⁵³ The next stage in the Government's plan to introduce a power of recall remained unclear for some time. In August 2013, the indications were that recall was somewhat on the backburner; the Minister's comments, in the letter which formed the Government's response to the PCRC's first Report on Lobbying, noted that the Government intended to legislate on recall 'when Parliamentary time allows'.¹¹⁵⁴

¹¹⁵¹ transparency.number10.gov.uk/business-plan-pdf/1:3.2.i

¹¹⁵² on 25 September 2012

¹¹⁵³ House of Commons Political and Constitutional Reform Committee, Second Special Report of Session 2012–13, *Recall of MPs: Government Response to the Committee's First Report of Session 2012–13*, HC 646

¹¹⁵⁴ Political and Constitutional Reform Committee, Sixth Report of Session 2013–14, *Introducing a statutory register of lobbyists: Government Response to the Committee's Second Report of Session 2012–13*, (HC 2013–14, 593) Appendix 1: Letter of 17 July 2013 from Chloe Smith, Minister for Political and Constitutional Reform to the Chair of the Political and Constitutional Reform Committee

Chapter Seven: The Influence of the Political and Constitutional Reform Committee on Over-arching Political Reform

1. Introduction

The Coalition's 'Programme for Government' described the parties' 'shared ambition to clean up Westminster'.¹¹⁵⁵ The section on 'Political Reform' specifically set out the following ambitions:

The Government believes that our political system is broken. We urgently need fundamental political reform, including a referendum on electoral reform, much greater co-operation across party lines, and changes to our political system to make it far more transparent and accountable.¹¹⁵⁶

This is not the place for a comprehensive review of the extent to which these aims have been fulfilled, but it is appropriate to examine and evaluate the relevance of the PCRC's work in this area. The overall context was one which created an environment open to constitutional and political reform. The Committee's inquiries into political party funding and finance and lobbying are germane. At base this work aspired to directly influence Government by 'encouraging' action (in the lobbying scenario) or by urging caution and further consideration. The PCRC used its position to highlight key issues of concern and, arguably, did this more successfully when media support was deployed.¹¹⁵⁷ This is discussed further below but what it primarily demonstrates is the difficulty in definitively determining tangible influence when the pressure comes, concurrently, from more than one source. It highlights a further

¹¹⁵⁵ HMG, *The Coalition Agreement: Our Programme for Government* (May 2010) 7

¹¹⁵⁶ *ibid* 26

¹¹⁵⁷ See comments in chapter nine and see commentary – Patrick Wintour, 'No extra state funding for political parties this Parliament, says Clegg', *The Guardian* (15 November 2011) in addition to regional news coverage, For example, the *Eastbourne Herald* <http://www.eastbourneherald.co.uk/news/national-news/action_urged_on_political_funding_1_3466966>. At the national level, *The Independent* - Sam Lister, 'MPs urge swift action to limit donations to political parties', *The Independent* (30 January 2012), Sky News, the BBC - BBC News, 'Party funding: MPs urge government to stick to reform' (29 January 2012) - and *City AM* picked up the story. The House of Commons Library Note on party funding also refers to the PCRC Report (CBP 07152, *Political party funding: controversies and reform since 1997* (24 March 2016) p15

potential pitfall for the Select Committees in that they, as with Government, have to view the media as another external actor upon whom they will wish to have some impact in order to bolster their position and increase the likelihood of success in terms of having their recommendations and proposals accepted by the Government.

The connection between proposals on lobbying, party funding and recall of MPs as part of a programme to restore trust in politics was evident in correspondence between the Committee and Ministers from the outset. These matters were first raised early in July 2010 and, in later communications, both the DPM and the Minister for Political and Constitutional Reform made reference to progress on the part of Government.

A. Political Party Funding and Finance

1. Background

As noted above, it is difficult to determine with any degree of certainty the impact which the PCRC's Report¹¹⁵⁸ had in bringing about Government action on this matter, particularly when one considers not only the Report of the Committee on Standards in Public Life (CSPL) on Political Party Finance,¹¹⁵⁹ but also that, prior to the 2010 General Election, all three main political parties made reference to the issue of party funding in their manifestos:

Conservatives: 'We will clean up politics: the expenses, the lobbying and problems with party funding'.¹¹⁶⁰

Labour: 'We believe that the funding of political parties must be reformed if the public is to regain trust in politics. Our starting point should be the Hayden Phillips proposals of 2008. We will seek to reopen discussions on party funding reform, with a clear understanding that any

¹¹⁵⁸ PCRC, *Political party finance* (HC 2010–12, 1763) - last report of the 2010-12 parliamentary session published on 29 January 2012

¹¹⁵⁹ Committee on Standards in Public Life, Thirteenth Report, *Political Party Finance - Ending the big donor culture* (November 2011, Cm 8208)

¹¹⁶⁰ Conservative Party Manifesto 2010, *Invitation to Join the Government of Britain*, 65

changes should only be made on the basis of cross-party agreement and widespread public support'.¹¹⁶¹

Liberal Democrats: 'Get big money out of politics by capping donations at £10,000 and limiting spending throughout the electoral cycle'.¹¹⁶²

Furthermore, the Coalition Government made an explicit commitment to 'pursue a detailed agreement on limiting donations and reforming party funding in order to remove big money from politics'.¹¹⁶³ This commitment was re-stated in the Government's mid-term review.¹¹⁶⁴

The PCRC's Report followed the publication of a Report into political party finance by the Committee on Standards in Public Life in November 2011 to which the DPM had responded and aimed to 'highlight' the opportunity presented by the publication¹¹⁶⁵ of the Report of the CSPL to achieve a solution to the long-standing issue of political party funding.¹¹⁶⁶ It urged the Executive to take action to progress reforms for political party finance and funding arrangements, albeit with the emphasis on the need for this to be cross-party reform. The PCRC called on the Government to fulfil its 'Programme for Government' pledges and commitment to 'pursue a detailed agreement on limiting donations and reforming party funding in order to remove big money from politics'.¹¹⁶⁷ The PCRC's Report criticised the DPM for pre-empting the CSPL Report by stating in the House that it would not be right to ask 'hard-pressed taxpayers' to pay more to political parties at a time when they were already coping with difficult economic conditions. The Committee described his action in so doing as 'undermining' the reception of the forthcoming CPSL Report.

PCRC Members met with the Committee on Standards in Public Life (as mentioned by one Committee member, in response to the Cabinet Office Minister's statement in the

¹¹⁶¹ The Labour Party Manifesto 2010, *A Future Fair for All*, p64 9:4

¹¹⁶² Liberal Democrat Manifesto 2010, *Change that works for you, Building a Fairer Britain*, 89

¹¹⁶³ HMG, *The Coalition Agreement: Our Programme for Government* (May 2010) p 21; also stated by Francis Maude, Minister for the Cabinet Office and Paymaster General, in the Commons (HC Deb 26 March 2012, vol 542, col 1157)

¹¹⁶⁴ HMG, *The Coalition: together in the national interest* (January 2013) 39

¹¹⁶⁵ On 22 November 2011

¹¹⁶⁶ For a useful summary of the background to the issue see HC Library SN/PC/6123 (3 April 2012)

¹¹⁶⁷ HMG, *The Coalition: Our Programme for Government*, May 2010

House)¹¹⁶⁸ in an informal forum several weeks after the publication of the CSPL's Report 'to discuss the Report, its reception and possible next steps on party political finance.'¹¹⁶⁹ The PCRC's subsequent Report contained three substantive recommendations, which were that:

1. [T]he...recommendations proposed by the CSPL...can only be treated as a package; any cherry picking of recommendations risks being seen as partisan. *The Government and political parties should consider the CSPL report seriously as a basis for future negotiations.*¹¹⁷⁰
2. No party should be perceived as having gained disproportionately from reform in this area.¹¹⁷¹
3. A cross-party solution will not be easy to achieve. But public confidence in politics risks being further undermined if some future scandal intervenes before a solution is in place. The Government and political parties must seize the opportunity presented by the CSPL to find such a solution. The Government has a particular duty to pursue an agreement, and *should set out how it intends to take this commitment forward before the summer.*¹¹⁷²

A Government response to the PCRC's Report, generally expected within two months, as per the established convention, was not, however, received by the end of the session. Nor did the Committee receive a 'holding response' or an explanation as to why a response remained outstanding, despite the efforts of the Committee Clerk to chase this up with the Cabinet Office. It can be assumed that the delay in response was for political reasons, that is because of the confidential nature of the high-level discussions being held between the main political parties. The Minister for the Cabinet Office and Paymaster General, Francis Maude made a statement in the House of Commons on party funding on Monday 26 March 2012.¹¹⁷³ The following debate included contributions from a large number of backbench MPs, including a number of members of the PCRC. The cross-party talks involved: Francis Maude and the Party Chairman, Lord Feldman,¹¹⁷⁴ representing the Conservatives;¹¹⁷⁵ David Laws and Tim Gordon

¹¹⁶⁸ Stephen Williams, HC Deb 26 March 2012, vol 542, col 1176

¹¹⁶⁹ PCRC, *Political party finance* (HC 2010–12, 1763) 2

¹¹⁷⁰ PCRC, *Political party finance* (HC 2010–12, 1763) 14 [emphasis added]

¹¹⁷¹ *ibid* 15

¹¹⁷² *ibid* 16 [emphasis added]

¹¹⁷³ HC Deb 26 March 2012, vol 542, col 1157

¹¹⁷⁴ Who had given evidence to the Kelly inquiry

¹¹⁷⁵ HC Deb 26 March 2012, vol 542, col 1158

(the Liberal's chief executive) for the Lib Dems; and, to represent Labour, Ed Miliband's parliamentary aide John Denham and a former party general secretary, Ray Collins.¹¹⁷⁶ Ed Miliband, then Labour leader, commented in the House that the DPM had written to him and the PM 'on 8 February, seeking cross-party talks with heads of terms to be decided by Easter—very soon. I replied with my suggested nominees 12 days later. Such was the Government's enthusiasm for reform, that in the five weeks since then I have heard precisely nothing about those talks, and neither has either of my nominees'.¹¹⁷⁷

2. Follow-up

The PCRC Chairman issued a reminder to Government of the call to reform party funding, before another 'scandal intervenes', in a press release on 26 March 2012.¹¹⁷⁸ This followed the news, widely reported, of cash for access allegations.¹¹⁷⁹ Allen commented: 'I take no pleasure in the vindication of our concern that the lack of progress on resolving the issues around party funding could mean that 'some future scandal' might intervene before a solution was in place'. One must remember that the Wright Reforms themselves, which brought about the strengthening of the Select Committees, were set in the context of reform resulting from political scandal. At an oral evidence session which the Committee held with the DPM, in April 2012, the issue of progressing towards a cross-party resolution was again raised. The Minister was pressed by members and responded that '[W]e all know the ins and outs of what a deal might look like. It really just is now a question of leadership and political will'.¹¹⁸⁰

The Cabinet Office's *Structural Reform Plan Monthly Implementation Update* for May 2012 confirmed the status of action 3.10(i) – 'Pursue detailed agreement on limiting donations and

¹¹⁷⁶ As reported - Patrick Wintour, 'Donor inquiry can break status quo', *Guardian online* (26 March 2012) <<http://www.guardian.co.uk/politics/2012/mar/26/donor-inquiry-break-status-quo>>

¹¹⁷⁷ HC Deb 26 Mar 2012, vol 542, col 1160

¹¹⁷⁸ PCRC News Release, 'Chair reminds Government of call to reform party funding' (26 March 2012)

¹¹⁷⁹ See, for example, BBC News, 'Tory Peter Cruddas quits after donor access claims' (25 March 2012); Patrick Hennessy, 'Tory co-treasurer Peter Cruddas quits over cash for access claim' *Daily Telegraph* (24 March 2012); and Daniel Boffey, 'Senior Tory Peter Cruddas resigns after cash for PM access sting' *The Guardian* (25 March 2012)

¹¹⁸⁰ PCRC, *The Coalition Government's Programme of Political and Constitutional Reform* (HC 2010-12, 178) Ev 50, Q198 (Clegg oral evidence, 19 April 2012)

reforming party funding (end 2014) – as ‘work ongoing’.¹¹⁸¹ The Number Ten website’s online Business Plan Update provided some further time indications: Action 3.10(i) became 3.8.i and had a scheduled completion date of July 2012; Action 3.8.ii ‘Bring forward proposals on limiting donations and reforming party funding’ had a scheduled start date of May 2013 and was scheduled to end in May 2014. As at 14 June 2013, the No. 10 Transparency Business Plan Review stated that the planned work with regards reforming political party funding - ‘3.8.ii Bring forward proposals on limiting donations and reforming party funding’ - was not yet started and overdue. This action was subsequently renumbered 4.4ii with a scheduled start date of September 2013 and a scheduled end date of May 2015. A related action - 3.8.i Pursue detailed agreement on limiting donations and reforming party funding - was then described as ‘in progress’ and ‘overdue’.¹¹⁸²

3. Subsequent Developments

In due course, however, after a series of meetings between the representatives of the three main parties¹¹⁸³ convened by the DPM, for discussions based on ‘principles identified by the CSPL, including the reform of donations and spending, how to deal with affiliate bodies and the efficiency and balance of existing state funding’,¹¹⁸⁴ the parties failed to reach agreement on beginning party funding reform. After the breakdown of these discussions, the DPM provided an update to Parliament via a Written Ministerial Statement:

Although it is now clear that reforms cannot go forward in this Parliament, I hope that the principles explored can inform further discussions on this topic and that the parties will then return to this issue after the next election.

The Government have decided to proceed with sensible and necessary improvements to the controls on third parties which campaign at general elections to ensure that they are fully transparent and not allowed to distort the political process. These

¹¹⁸¹ See No.10 Update: <www.number10.gov.uk/wp.../06/CO-SRP-update-may-2012v2.pdf>

¹¹⁸² See Business Plan: <<http://transparency.number10.gov.uk/business-plan/1>>

¹¹⁸³ Seven meetings in 2012 and 2013; Previous talks were also abandoned in 2007 because parties could not agree

¹¹⁸⁴ CSPL, *Political Party Finance - Ending the big donor culture* (November 2011, Cm 8208)

proposals will go ahead as part of a package of measures in a Bill which will include provisions for a lobbying register. We will introduce the Bill before the summer recess.¹¹⁸⁵

In August 2013¹¹⁸⁶ this action was classified as 'complete' (as of July 2013), with the note that 'Cross-party talks on reforming party funding have now formally ended, without agreement. Significant reform of third party campaigning is included in the *Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Bill*'.¹¹⁸⁷

¹¹⁸⁵ HC Deb 4 July 2013, vol 565, column 62WS; BBC News, 'Political parties shelve funding reform talks' (4 July 2013)

¹¹⁸⁶ Accessed 12 August 2013

¹¹⁸⁷ Discussed below

B. Lobbying & Regulation

1. Introduction and Background

Lobbying, in the sense of individuals, companies and external other bodies having ‘undue access and influence over the policy making process’,¹¹⁸⁸ has been a particularly high profile, and politically sensitive, matter since the (still) relatively recent expenses scandal which resulted in a grave loss of confidence in politicians and the political system more widely. In 2009, the PASC produced a Report which was highly critical of the world of lobbying although the recommendations within this Report were met with outright rejection by the (then) Government.¹¹⁸⁹ Shortly afterwards, all three of the main political parties indicated in their manifestos, for the 2010 General Election, that they ‘would’,¹¹⁹⁰ or in the case of the Conservatives, ‘may’, if the industry failed to adequately self-regulate,¹¹⁹¹ legislate to regulate lobbying. For the Conservative Party the policies around lobbying formed a part of a wider commitment to ‘clean up politics: the expenses, the lobbying and problems with party funding’.¹¹⁹² For Labour, the inclusion of a commitment to statutory registration of lobbyists was something of a sea change from their stated preference, only a year before, in response to the PASC Report, in which they clearly favoured voluntary self-regulation.¹¹⁹³

¹¹⁸⁸ PCRC, *Introducing a statutory register of lobbyists* (HC 2012-13, 153) p3 (summary)

¹¹⁸⁹ PASC, *Lobbying: Access and Influence in Whitehall*, (HC 2008-09, 36); PASC, *Lobbying: Developments since the Committee’s First Report of Session 2008-09: Government Response to the Committee’s Fifth Report of Session 2009-10* (HC 2009-10, 393); PASC, *Lobbying: Developments since the Committee’s First Report of Session 2008-09* (HC 2009-10, 108)

¹¹⁹⁰ ‘Curb the improper influence of lobbyists by introducing a **statutory register of lobbyists**, changing the Ministerial Code so that ministers and officials are forbidden from meeting MPs on issues where the MP is paid to lobby, requiring companies to declare how much they spend on lobbying in their annual reports, and introducing a statutory register of interests for parliamentary candidates based on the current Register of Members’ Interests’. (Liberal Democrats, Manifesto 2010, p89); ‘A **statutory register of lobbyists**, with MPs banned from working for lobbying companies and required to seek approval for paid outside appointments’. (Labour Party, *A Future Fair for All*, 2010, p9:2 and re-iterated as ‘step 44’ of ‘50 steps to a future fair for all’ (p11:5))

¹¹⁹¹ ‘The lobbying industry must regulate itself to ensure its practices are transparent – if it does not, then we will legislate to do so.’ (The Conservative Party, *Invitation to Join the Government of Britain*, Manifesto 2010, p66);

¹¹⁹² The Conservative Party, *Invitation to Join the Government of Britain*, Manifesto 2010, p65

¹¹⁹³ PASC, *Lobbying: Access and Influence in Whitehall: Government Response to the committee’s First Report of Session 2008-09* (HC 2008-09, 1058) 5

Under the Coalition Government, these pledges translated into a commitment to ‘regulate lobbying through introducing a statutory register of lobbyists and ensuring greater transparency detailed within the section entitled ‘Government Transparency’ in the Coalition's *Programme for Government*.¹¹⁹⁴ This commitment was re-stated in the Coalition's Mid-Term Review.¹¹⁹⁵ At the Second Reading of the *Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Bill*, the Leader of the House, introducing the Bill, explained that it ‘implements our coalition commitment to introduce a statutory register of lobbyists, providing transparency in who lobbies whom, and for whom’.¹¹⁹⁶ The PCRC Report ‘examined whether a statutory register of lobbyists *would* increase transparency’¹¹⁹⁷ and suggested some more immediate means of bringing about greater transparency than what was, in the Committee's view, inadequate legislation.¹¹⁹⁸

2. Pre-Legislative Scrutiny

In terms of the legislative timeframe, events appear to have rather ‘forced’ the government's hand in this instance, most notably in relation to the situation which arose as a result of the allegations of ‘cash for questions’ faced by Patrick Mercer, then a Conservative MP who subsequently resigned.¹¹⁹⁹ Time pressures were indeed cited as the reason for the acceleration of the legislation, albeit without detailed or explicit reasons being provided by the Government, in its belated response to the PCRC's 2012 Report. Ministerial statements in the House also indicated that this hurried timeframe was due to the more pressing need to fulfil the Coalition commitment to bring forward legislation on a statutory register:

The events that have unfolded over the weekend demonstrate just how important transparency in political life is. We will therefore introduce legislation to provide for a lobbying register before the summer recess. The register will go ahead as part of a

¹¹⁹⁴ HMG, *The Coalition: Our Programme for Government*, May 2010, Section 16, p21

¹¹⁹⁵ HMG, *The Coalition: together in the national interest*, January 2013, p39

¹¹⁹⁶ HC Deb 3 September 2013, vol 567, col 169

¹¹⁹⁷ PCRC, *Introducing a statutory register of lobbyists* (HC 2012-13, 153) p3

¹¹⁹⁸ See PCRC recommendations below

¹¹⁹⁹ BBC News, ‘Mercer aftermath: Will PM introduce new lobbying laws?’ (2 June 2013); Holly Watt and Claire Newell, ‘Cash for questions: Patrick Mercer no stranger to controversy’ *Daily Telegraph* (29 April 2014)

broad package of measures to tighten the rules on how third parties can influence our political system.¹²⁰⁰

Mark Harper, whilst still Minister for Political and Constitutional Reform, gave assurances to the PCRC that the Government intended to publish a White Paper and Draft Bill on Lobbying for pre-legislative scrutiny by the end of the 2012-13 parliamentary session.¹²⁰¹ In a later evidence session, a members of the PCRC commented that the DPM ‘also referred to the publication of a draft Bill when he wrote to us on 4 February 2013’.¹²⁰² This commitment had also been reiterated in July 2012 when the Government published the responses received in relation to the Green Paper consultation of January.¹²⁰³ This publication incorporated a useful summary of the PCRC evidence sessions on the matter as an annex¹²⁰⁴ and referenced the Committee’s work in the body of the Report.¹²⁰⁵ The Bill, however, was eventually published in July 2013¹²⁰⁶ and presented no opportunity for pre-legislative scrutiny; the promised White Paper never appeared. Thus the Committee was accurate in claiming that it had been ‘misled’ by the Government with regards the publication of a draft Bill on lobbying.¹²⁰⁷

The following extract, from the letter which formed the Government’s Response to the Committee’s Report, provided something of an explanation, albeit one which the Committee considered to be wholly inadequate:

The timetable for the introduction of the Bill has not, regrettably, allowed for formal pre-legislative scrutiny of the provisions. The proposals for a statutory register have, however, been subject to a full consultation and detailed scrutiny by the Committee

¹²⁰⁰ Chloe Smith, HC Deb 4 June 2013, vol 563, col 1363

¹²⁰¹ On Thursday 17 May 2012

¹²⁰² PCRC, *The Government’s Lobbying Bill*, (HC 2013–14, 601-II) Ev 6 Q36 (Flynn)

¹²⁰³ Cabinet Office, *A Summary of Responses to the Cabinet Office’s Consultation Document ‘Introducing a Statutory Register of Lobbyists’* (Cmnd 8412, July 2012)

¹²⁰⁴ Cabinet Office, *A Summary of Responses to the Cabinet Office’s Consultation Document ‘Introducing a Statutory Register of Lobbyists’* (Cmnd 8412, July 2012) Annex E

¹²⁰⁵ Cabinet Office, *A Summary of Responses to the Cabinet Office’s Consultation Document ‘Introducing a Statutory Register of Lobbyists’* (Cmnd 8412, July 2012) para 4, p 5; see also comments by the Minister, Chloe Smith: ‘The **evidence from the consultation and the report from the Political and Constitutional Reform Committee** will allow us to develop the statutory register in a way that increases transparency, while ensuring equal treatment of all parties and not placing disproportionate burdens on those affected’.

¹²⁰⁶ As the *Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Bill*

¹²⁰⁷ PCRC, *The Government’s Lobbying Bill*, (HC 2013–14, 601-I) 2

and we will be undertaking targeted stakeholder engagement over the summer to ensure that all aspects of the Bill are subject to thorough examination.¹²⁰⁸

This response was received the evening before the Minister gave evidence before the Committee.

This evidence session was before a rather depleted committee (with only four members, including the Chair, in attendance) on the day of adjournment for the summer recess and the day on which the Bill was ultimately published.¹²⁰⁹ In itself this was problematic as the Committee had no time to consider the Bill and question the Minister on specifics. Chloe Smith, then the Minister, made excuses during the hearing and iterated that there was no real need for pre-legislative scrutiny on the 'lobbying section of the Bill' as 'the Leader of the House had already answered [in the House] that he feels that the scrutiny you were able to give the earlier proposals on lobbying, and the fact that the proposals are not greatly different to those you saw then, would suggest that further scrutiny of that section of the Bill is not quite as it would be for other Bills that had come a different route'.¹²¹⁰ In response the Chair 'corrected' this point explaining that the previous 'process...where we looked at some of the issues, was in response to a consultation. It was not pre-legislative scrutiny in the official sense' and seeking to put on the record not only that the PCRC wanted to do some pre-legislative scrutiny but also that it should not 'be the duty of a Select Committee to do that'.¹²¹¹ The Minister maintained that the Bill would speak for itself in answering many of the Committee's points.

This particular evidence session was noteworthy in that one could observe a more confrontational Committee that had been seen in previous hearings; in that the approach, from the beginning of the session, was far removed from the genial and conciliatory tone which had become customary with the PCRC. The Chair was highly critical of the

¹²⁰⁸ PCRC, *Introducing a statutory register of lobbyists: Government Response to the Committee's Second Report of Session 2012–13*, (HC 2013–14, 593) Appendix One

¹²⁰⁹ 18 July 2013

¹²¹⁰ Political and Constitutional Reform Committee, *The Government's Lobbying Bill*, (HC 2013–14, 601-I) Q4 (18 July 2013)

¹²¹¹ PCRC, *The Government's Lobbying Bill*, (HC 2013–14, 601-II) Ev 7, Q49

Government's 'treatment' of Parliament and the Committee took the 'unprecedented step'¹²¹² of producing a Report criticising the process around the Government's response.¹²¹³ The Committee Chair raised concern that several cumulative legislative process and procedural failures – specifically 'a delayed response from the Government to a Select Committee of the House of Commons; adding large swathes of new material at a very late stage; and not being able to do any pre-legislative scrutiny to carry out Parliament's functions' – could lead to 'making bad law'.¹²¹⁴ Other members described the way in which the Committee had been treated – particularly with regards the late and delayed response – as 'contemptible'.¹²¹⁵

2.1. Lacunas in the Lobbying Legislation

The Committee identified, what it considered to be, lacunas in the legislation itself as well as the procedural problems discussed above. The proposals in the Government's consultation paper¹²¹⁶ focused the register on those who undertake lobbying activities on behalf of a third party client, rather than 'in-house' lobbyists, and indicated a preference for a 'limited register of activity to a regulator for the whole industry' – this was far from comprehensive.¹²¹⁷ A further concern which stemmed from the consultation paper was the failure to define the notion of a 'lobbyist'; the absence of what was, in the Committee's view, a fundamental element was flagged up in its Report. This criticism, however, might be considered to be somewhat disingenuous as the Government was arguably trying to avoid pre-empting the outcome of the consultation – in which one of the main issues upon which they sought a response was in relation to the definition of a lobbyist. In addition the consultation paper *did* provide a narrow description: 'those who undertake lobbying activities on behalf of a third party or whose employees conduct lobbying activities on behalf of a third party client'.¹²¹⁸ In recognition of the importance of ensuring an appropriate classification would be settled

¹²¹² Not as exceptional as it might appear – bearing in the mind the Committee had only existed for three years at this stage.

¹²¹³ PCRC, *The Government's Lobbying Bill*, (HC 2013–14, 601-II) Ev 1, Q2

¹²¹⁴ *ibid* Ev 2, Q4

¹²¹⁵ *ibid* Ev 5, Q35

¹²¹⁶ Cabinet Office, *Introducing a Statutory Register of Lobbyists* (Cmnd 8233, January 2012)

¹²¹⁷ PCRC, *Introducing a statutory register of lobbyists* (HC 2012-13, 153) p 3 (Summary)

¹²¹⁸ Cabinet Office, *Introducing a Statutory Register of Lobbyists* (Cmnd 8233, January 2012) p11

upon, the CIPR, PRCA and APPC jointly commissioned a definition – which was specifically to be used in legislation on lobbying and was written largely by a parliamentary draughtsman. These organisations provided the draft definition to the government.¹²¹⁹ The Government, however, declined to adopt this draft definition.

¹²¹⁹ See CIPR, 'Definition of Lobbying': <<http://www.cipr.co.uk/content/policy-resources/policy/lobbying-regulation/definition-lobbying>> and letter from all three organisations to the Minister, Chloe Smith, on 17 April 2013

2.2. Attention Received by the PCRC Report

Published the same month as the responses to the Government's consultation, the Committee's Report was thus the recipient of media attention that is unlikely to have been as forthcoming had its Report been the only document produced on the subject. Indeed, an element of press coverage was practically assured by the Committee's clear call for the Government to 'scrap its proposals for a statutory register of third party lobbyists' asserting that they would 'do nothing to improve transparency and accountability about lobbying. Imposing a statutory register on a small part of the lobbying industry without requiring registrants to sign up to a code of conduct could paradoxically lead to less regulation of the lobbying industry'.¹²²⁰ Strikingly the PCRC Inquiry had largely mirrored the Government consultation in terms of timeframe and there was also, understandable, overlap in those organisations and individuals who responded to and provided evidence to both consultation and inquiry.

The PCRC Report was referred to in the House of Lords in December 2012¹²²¹ and continued to receive decent levels of coverage in the media; this interest was maintained, in large part, by the Committee's decision to continue its inquiry after the Bill was published. Understandably, given it was the publication which exposed the wider expenses scandal a few years earlier, the *Daily Telegraph* drew attention to the Committee's recommendations at every stage.¹²²² In early June 2013, there was a further call by the Chair of the PCRC for the Government to heed and act upon the recommendations made by the Committee in its Report the previous summer.¹²²³ This reminder was precipitated by further exposure in the

¹²²⁰ PCRC, *Introducing a statutory register of lobbyists* (HC 2012-13, 153) 18

¹²²¹ HL Deb 12 December 2012, vol 741, col 1056, Response by Lord Wallace to a question by Baroness Hayter: 'My Lords, we are certainly intending to move on this but as the noble Baroness will appreciate if she has looked through the replies to the consultation document and the companion report of the Political and Constitutional Reform Committee in the other place, there is a quite remarkable dissensus among respondents. The Government's summary of replies to the consultation document remarks at one point, in effect, that a lot of those consulted regard themselves as a legitimate part of the political process but regard everyone else as lobbyists. That is part of the problem. The paid lobbyists are a small part of those with whom we are talking, and they wish charities, think tanks, trade unionists and others also to be included on any register of lobbyists.'

¹²²² For example, *Daily Telegraph*, 'MP calls for crackdown on lobbyists', 1 February 2013

¹²²³ PCRC News Release, 'Chair urges Government to heed Committee's lobbying report' (3 June 2013)

media regarding 'underhand lobbying' practices and follows an earlier call to Government to take action in January.¹²²⁴

The lobbying bill has also come in for criticism from the chairman of the committee tasked with scrutinising it. Political and Constitutional Reform Committee chairman Graham Allen told the Independent the law was "rushed and ridiculous" and called for a rethink. Labour MP Mr Allen said it would fail in its aim to open up the £2bn industry to effective scrutiny, and is calling for an urgent rethink on the bill. 'Instead of addressing the prime minister's promise to 'shine the light of transparency' on lobbying, this flawed legislation will mean we'll all be back in a year facing another scandal,' he said.¹²²⁵

Thus the prominence of the Committee's views, amongst others, on this controversial issue, was assured, particularly over the summer months when Parliament was in recess. Allen's graphic criticism of the Bill as 'a dog's breakfast' was also frequently cited by various media sources.¹²²⁶ In addition, the media, and the *Daily Telegraph* in particular, was quick to pick up on the Committee's recommendations in the light of the next lobbying scandal. This was viewed as inextricably linked to the Coalition's failure to introduce an effective recall mechanism for MPs – this was due to a breakdown in talks amongst all parties to agree upon the detail of proposed recall legislation.¹²²⁷ The *Telegraph's* take on this matter was that the 'decision [of the former whip, Patrick Mercer] to remain an MP (although having resigned the Conservative whip) until 2015 will raise further questions about removing MPs from Parliament, as the disgraced former shadow minister stands to receive more than £130,000 from taxpayers as there is no mechanism for removing MPs from Parliament - unless they are jailed'.¹²²⁸

¹²²⁴ PCRC News Release, 'Committee Chair urges Government to act on lobbying' (4 January 2013)

¹²²⁵ BBC News, 'Lobbying law 'would outlaw TUC conference' (19 August 2013)

¹²²⁶ See also: James Cusick, 'Exclusive: David Cameron condemned over 'ridiculous' reforms to lobbying', *The Independent* (19 August 2013); Peter Dominiczak, 'Lobbying Bill is a 'dog's breakfast', MP warns' *Daily Telegraph* (19 August 2013); and PR Week: <http://www.prweek.com/uk/news/1207804/lobbying-bill-a-dogs-breakfast-claims-political-reform-chairman/>

¹²²⁷ Discussed above at chapter six

¹²²⁸ Holly Watt 'Two years and £130,000 in pay before disgraced MP can be voted out' *Daily Telegraph* (31 May 2013)

Michael Burrell, Chair of the Association of Professional Political Consultants, in response to comments made by UKIP's Nigel Farage in the *Guardian* suggested that the PCRC ought to be included in a dialogue to find a solution to concerns regarding lobbying. This flagged up the Chair's comments that 'a statutory register which includes only third-party lobbyists would do little to improve transparency about who is lobbying whom, as these meetings constitute only a small part of the lobbying industry'.¹²²⁹

A combination of the media profile of this matter and PCRC exposure put pressure upon the Government to follow through on the Coalition Programme's commitment; a Bill was published (later than expected) on 18 July 2013 with the rather cumbersome title: *Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Bill 2013-14* (hereafter the *Lobbying Bill*). Following publication, the Chair of the PCRC highlighted the Government's abject failure to follow best practice:

It is the convention for Government to respond to Select Committee reports in two months. In this case, the Government took *over a year* and then gave us a response that is a page and a half long and doesn't engage with any of the detailed points we made in our original report.

We are also unhappy that we were not given a chance to scrutinise a draft lobbying Bill. Pre-legislative scrutiny results in stronger legislation and this is a missed opportunity.¹²³⁰

It is worthy of note also that the Electoral Commission was 'not consulted about the Bill until very close to publication, despite the fact that the Bill contains a number of items that change the terms of reference of the Electoral Commission and according to it a role in 'policing' the measure about which the Commission was said to be 'deeply uncomfortable'.¹²³¹ Nor indeed were the lobbying trade associations adequately consulted – the Director of Policy and

¹²²⁹ Michael Burrell, 'We have worked hard to reform this system: Nigel Farage's analysis of the lobbying scandal is pure mischief-making' *The Guardian* (10 June 2013)

¹²³⁰ PCRC News Release, 'Committee publishes report on Government's Response to Lobbying Report' (19 July 2013) [emphasis added]

¹²³¹ Graham Allen, HC Deb 10 September 2013, vol 567, col 864

Communications at CIPR explained that ‘after Mark Harper’s initial efforts at engagement and the negative response to the consultation, the government apparently refused to discuss the issue of a statutory register, not only with the industry but any stakeholders. It came as no surprise to learn, during the recent PCRC hearing, that the electoral commission learned about their role in part two of the Bill along with the rest of us, that is to say, when it was published’.¹²³²

Following the publication of the Lobbying Bill in July 2013, the PCRC issued a call for evidence, with an extremely condensed timeframe ‘to accommodate the likely legislative timetable for the Bill’.¹²³³ The next day saw the publication of the long-overdue Government Response¹²³⁴ to the Committee’s original report on Lobbying.¹²³⁵ The Committee had, once again, been placed in the difficult position of scrutinising, and responding to, a piece of legislation at very short notice – echoing the timbre of the Committee’s earliest work¹²³⁶ – and this inquiry was (again) being held during the recess. The Bill was to be given a Second Reading the day after Parliament reconvened. The PCRC submitted that ‘for Government to push through legislation in this way is contemptuous of Parliament’.¹²³⁷ Add to this the lack of consultation with affected parties referred to above and the Committee had solid grounds to claim ‘[T]his is an object lesson in how not to produce legislation’.¹²³⁸

The Committee was recalled to hold urgent extra hearings during Parliament’s summer recess to take further evidence from leading players in the lobbying industry. These further evidence sessions in the second tranche of the Committee’s inquiry, specifically relating to the *Lobbying Bill*, were held on 29 August and 3 September with a number of the same witnesses from the Committee’s previous inquiry on the issue returning. There were also a number of additional witnesses, for example, Andrew Lansley, as Leader of the House of Commons (and Minister

¹²³² Private Correspondence with CIPR, 11 September 2013

¹²³³ 23 August 2013 (just over a month with the call for evidence being launched on 18 July)

¹²³⁴ PCRC, *Introducing a statutory register of lobbyists: Government Response to the Committee’s Second Report of Session 2012–13*, (HC 2013–14, 593)

¹²³⁵ PCRC, *Introducing a statutory register of lobbyists*, (HC 2012–13, 153) [incorporating HC 1809-i-v, Session 2010–12] Vols I&II

¹²³⁶ As discussed above, at chapter four, in relation to the Fixed-term Parliaments and AV and Constituencies legislation in 2010

¹²³⁷ PCRC, *The Government’s Lobbying Bill*, (HC 2013–14, 601-I) 2 (introduction)

¹²³⁸ PCRC, *The Government’s Lobbying Bill*, (HC 2013–14, 601-I) 3

at Cabinet Level with responsibility for the Bill) and the Chair of the Electoral Commission, Jenny Watson.¹²³⁹ The Committee clearly worked incredibly hard on this issue, both in terms of its First Report and, the highly time-pressured, Second Report specifically examining the Bill, in order to ensure that its Report would be completed in time to inform the House during the debates and that by assisting the Parliamentary scrutiny of the Bill (in the House)¹²⁴⁰ it would help shape the legislation accordingly. In the Chair's words the Committee 'worked very hard and received 81 organisations throughout the UK, which are listed at the back of the report—not just anybody, but people who had a real interest.'¹²⁴¹ Indeed, it was as result of the evidence which the Committee received that it widened the focus of inquiry from its original intention of examining Part One of the Bill to include Part Two and, to a lesser extent, Part Three.

¹²³⁹ PCRC, *The Government's Lobbying Bill*, (HC 2013–14, 601-II) (evidence session on 13 August 2013)

¹²⁴⁰ Albeit after Second Reading had occurred in the Commons

¹²⁴¹ HC Deb, 9 September 2013, vol 567, col 782

3. Impact and Influence of the PCRC - Specific Recommendations

It became rapidly apparent that these Government proposals, on the statutory registration of lobbyists, met with significant divergence of opinion, not least within the Committee itself. As explained by the Chair in the press release accompanying publication of the Committee's Report, there were 'strong views expressed by different Committee members during the course of the inquiry'. Some PCRC members¹²⁴² were of the opinion that it was not clear that there was widespread public concern about lobbying and that no statutory register at all would be better than what the Government had proposed.¹²⁴³

One of the key recommendations made by the PCRC in its initial report¹²⁴⁴ was that there was a need to include *all* lobbyists; the Bill, however, referred only to 'consultant lobbyists' (that is, so-called 'third party' lobbyists). This concern was raised during an oral evidence session with the Minister who explained that the point of the Bill was 'to set out who is lobbying on behalf of whom, in terms of consultant lobbyists'¹²⁴⁵ and that, in the view of the Government, it was 'correct that this Bill deals with a limited set of people...specifically with Ministers and permanent secretaries' to 'operate in conjunction...with a meeting schedule, with publication of meetings. It is the two halves of that that allow a citizen to understand who has met whom.'¹²⁴⁶ The Committee's later Report recommended that if this was the intention there was no need for a statutory lobbying register to achieve this as such details could be included with the current information that is published about the meetings with Ministers and Permanent Secretaries.¹²⁴⁷

3.1. The Second PCRC Report – 'The Government's Lobbying Bill'

¹²⁴² Including Simon Hart, who had experience from a different and personal perspective, before election as an MP he had held positions with the Countryside Alliance as its Chief Executive of the Countryside Alliance and prior to that the Director of the 'Campaign for Hunting'.

¹²⁴³ PCRC News Release, 'Plans for statutory register of lobbyists should be scrapped, say MPs' (13 July 2012)

¹²⁴⁴ PCRC, *Introducing a statutory register of lobbyists*, (HC 2012–13, 153) [incorporating HC 1809-i-v, Session 2010-12] Vols I and II

¹²⁴⁵ PCRC, *The Government's Lobbying Bill*, (HC 2013–14, 601-II) Chloe Smith, Minister for Political and constitutional Reform, Q28

¹²⁴⁶ *ibid* Q71

¹²⁴⁷ PCRC, *The Government's Lobbying Bill*, (HC 2013–14, 601-I) 8

Overall, the influence of the PCRC's First Report on Lobbying, despite widespread press coverage, appears to have been minimal; was the Second Report likely to be any more influential? Despite various constraints, the Committee succeeded in putting together a comprehensive report on the Bill 'in about seven working days'¹²⁴⁸ – its Second Report on lobbying¹²⁴⁹ – just in advance of the Bill's Committee Stage. As discussed above, it was a combination of factors including recalling the Committee during the summer recess and the continued campaign being waged simultaneously by the Committee Chair, alongside a range of high profile organisations from the NCVO to the Trade Unions and the Electoral Commission, which helped to maintain the profile of this Bill in the media, and, thus to maintain the pressure on the Government to 'reconsider' aspects of the legislation. In the many and varied press reports the PCRC and/or Allen as Chair were frequently cited as an authoritative voice on the matter – as indeed the Committee could be considered to be, given its extensive and detailed evidence sessions and Reports. As had become customary, the PCRC took evidence widely before producing a detailed and thorough Report; witnesses included the professional body, the Charter Institute of Public Relations (CIPR), which represents public affairs and public relations professionals. As the Chair, expressed most succinctly: 'I believe in evidence-based policy making.'¹²⁵⁰

At the Bill's Second Reading, the Leader of the House acknowledged the work of the PCRC in scrutinising the proposals and the Bill and reiterated the Government's apology for the delay in responding to the Committee's first report on lobbying. The Minister suggested that 'in most instances the Committee, and many who have proffered alternative plans, are *seeking to do something different from what the Bill sets out to do*. They are seeking to regulate lobbying activity, while we are seeking to create a transparency regime so that we can see who is lobbying, but are not attempting to control the industry'.¹²⁵¹ Allen's response to the Minister struck a distinctly different tone than many of his usual contributions to debate in the House – it was strident in its disapproval of the Government's 'treatment' of the

¹²⁴⁸ HC Deb 9 September 2013, vol 567, col 729

¹²⁴⁹ PCRC, *The Government's Lobbying Bill* (HC 2013–14, 601-I)

¹²⁵⁰ HC Deb 9 September 2013, vol 567, col 730

¹²⁵¹ HC Deb 3 September 2013, vol 567, col 173 [emphasis added]

Committee;¹²⁵² he later referred to a distinct lack of co-operation from Government on this matter.¹²⁵³

During the Bill's Second Committee day, Allen demonstrated more of the congeniality and pragmatism we had come to expect from him and the Committee as a collective entity; he acknowledged that the Government was 'starting to listen' and thus 'we will end up with a much better Bill'.¹²⁵⁴ The following quotation provides a good representation of the tone of constructive criticism the Committee (or at least its Chair) often employed:

My Committee produced a very hurried response, which required its members to come back in the recess to take evidence. We ought now to take the time to have a proper look at such issues and get these provisions right. That is one of the reasons why I urge the Committee not to agree to that clause 27 should stand part of the Bill. We have done well today. A lot of people have been involved in helping the Government to see the truth. We have got them to it on clause 26, but on clause 27 we still have a great deal more work to do.

I do not want to box the Government into a corner, but I think the best way to proceed is to decide that clause 27 should not stand part of the Bill so that there is then a period in which they can rewrite it and make it acceptable.¹²⁵⁵

This is the same type of a constructively critical approach which was evident in the Committee's Report, in which the main recommendation was that:

the Government should withdraw the Bill, and support a motion in the House to set up a special Committee to carry out pre-legislative scrutiny, using the text of the existing Bill as a draft. The Committee should be charged with producing an improved

¹²⁵² HC Deb 3 September 2013, vol 567, col 173

¹²⁵³ HC Deb 3 September 2013, vol 567, col 203

¹²⁵⁴ HC Deb 10 September 2013, vol 567, col 924

¹²⁵⁵ HC Deb 10 September 2013, vol 567, col 924; Ultimately the division on clause 27 was close with Ayes 291 and Noes 260 – HC Deb 10 September 2013, vol 567, col 942

Bill within six months. That Bill should then be re-introduced to the House and complete its passage onto the statute book as soon as possible.¹²⁵⁶

Despite the stridently critical tone of the PCRC Report it remained demonstrably clear that the Committee's approach was to try to improve rather than simply to criticise without suggestions for alternative 'solutions'; the PCRC explained that it was not critical merely 'because we want to hinder the Government in pursuing its legislative programme, but because it is in all our interests—those of the Government, Parliament and the public—to *produce an Act that works*.'¹²⁵⁷The Committee's stated aim, to 'ensure that an improved Bill makes its way onto the statute book,'¹²⁵⁸ was reiterated in the Report's conclusion.

In the context of specific expertise in relation to drafting workable laws, the separate inquiry by the Committee, into improving legislative standards¹²⁵⁹ heightened its awareness and knowledge of the requirements of producing 'good' legislation and thus placed the Committee in, perhaps, a unique position to suggest where the Government had failed in this regard, and additionally, to make appropriate and constructive, albeit radical, suggestions for improvement. The weight which can be placed upon the expertise which the Committee has developed is further strengthened, in these circumstances, by both the extent of evidence taken by the Committee, and, by the breadth of consensus on the perceived problems with the Government's proposals; as was mentioned in debate in the House, it is rather a unique event which witnesses the Countryside Alliance and the League Against Cruel Sports, on the same side of an argument.

As the Chairman explained:

We can all swap stories about who did or did not do pre-legislative scrutiny, but let us have a principled view that it is wrong not pre-legislatively to scrutinise a Bill. The way to do that is to put it in our Standing Orders that normally—apart from emergencies,

¹²⁵⁶ PCRC, *The Government's Lobbying Bill*, (HC 2013–14, 601-I) 98

¹²⁵⁷ *ibid* 98 [emphasis added]

¹²⁵⁸ *ibid* 5

¹²⁵⁹ PCRC, *Ensuring standards in the quality of legislation* (HC 2013-14, 85)

when the Speaker writes a warrant stating that, because we need to get something through fairly quickly, part of the process can be dispensed with—it will be standard practice to have pre-legislative scrutiny. Had we done so on this occasion, we would probably be in danger of arriving at a consensus on the Bill.¹²⁶⁰

The Committee's realism and pragmatic approach was evident additionally in that if their main recommendations – such as the removal of clause 27(1) and clause 35 from the Bill¹²⁶¹ - were not to be accepted by Government, they had also suggested amendments to Parts 1 and 2 of the Bill which they thought 'would improve it'.¹²⁶² Furthermore, Allen commented in the House that 'in addition' to the PCRC Report, the Committee would 'also propose on an *all-party basis* a series of amendments to make the Bill workable' noting that this was 'because—amazingly—if we want a lobbying Bill, it is possible to build one across the House'.¹²⁶³

The wider value of the work of the Committee, as I have framed it in terms of educational gain – individually by Committee members but also the wider influence in terms of a better-informed Parliament – is perhaps also evident in the context of the contribution of Committee members to Parliamentary debates during the legislative process.¹²⁶⁴ The Bill was to be dealt with by a Committee of the Whole House over three days,¹²⁶⁵ and, at this stage, the PCRC

¹²⁶⁰ HC Deb 3 September 2013, vol 567, col 192

¹²⁶¹ PCRC, *The Government's Lobbying Bill*, (HC 2013–14, 601-I) 89

¹²⁶² *ibid* 99

¹²⁶³ HC Deb 3 September 2013, vol 567, col 203 [emphasis added]: Also 'One has to work pretty hard to get Spinwatch on the one hand, and lobbying associations on the other, to come together and say, "We can do this," but we have interviewed as witnesses people from those organisations and they have told us that by working with a special Committee of the House for several months we can produce a Bill to address the issues about which we are all concerned. That is partly the problem. I agreed with the Prime Minister when he said that the next big scandal may well be lobbying, so let us get in there now, sort it out and be pre-emptive. I am afraid, however, that the Bill does not tackle that problem. I agree with the coalition parties and the Conservative and Liberal Democrat Members who pulled together the coalition agreement and said, "We should have something on the statute book about lobbying." We are trying to fall out when it is easier to agree, and my Committee will produce the basis on which such agreement can happen, whether or not it is taken up'.

¹²⁶⁴ For example, in addition to the Chair, further Committee members were present during debates and made contributions. As the Chair expressed it 'Other members are on shift to come and do their turn over the next three days' (HC Deb 9 September 2013, vol 567, col 729)

¹²⁶⁵ 9, 19 and 11 September 2013 designated as Committee Days

Report was ‘tagged’ as a relevant document.¹²⁶⁶ One Committee member provided a clear summary:

The Political and Constitutional Reform Committee was unequivocal in its criticism of the original consultation paper. Unusually, one of the recommendations was to withdraw the whole thing and start all over again, because it was so bad. Having sat through the evidence that we took at that time, it was clear to me that no one on any side of the debate on lobbying was satisfied. The people who wanted more regulation thought that the proposal was not good enough; the people who perhaps did not want regulation also thought that it was very bad....Then, all of a sudden, in a panic, the Bill comes forward. It is not a good Bill. We should not go ahead with it, but we need to do something about lobbying.¹²⁶⁷

The Opposition Minister, Maria Eagle, also drew upon the Committee’s work and the Government’s tardy response to admonish the Leader of the House, commenting that ‘He can hardly be surprised that the Committee believes that the Government have shown “a lack of respect for Parliament and for the many people who contributed to our inquiry”’.¹²⁶⁸ Setting aside the obvious political convenience for an Opposition to be able to rely heavily upon the criticisms of a Parliamentary Committee to support its own arguments, the resultant heightened profile of the work of the Committee is in itself influential. Additionally, the Chair of the Joint Committee of Human Rights congratulated the PCRC ‘on the great work that it has done’.¹²⁶⁹

As Committee Chair, Allen played a prominent role in the second reading debate and during the committee stage, with a leading role being taken on days one and two. In this particular instance, it is clear that without the accelerated scrutiny carried out by the PCRC, in order to produce its Report on the Bill, the House would have been inadequately aware of the issues arising and the debate would have been substantially less well-informed.

¹²⁶⁶ As was another Report –that of the Standards Committee, *The Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill* (HC 2013-14, 638)

¹²⁶⁷ HC Deb 3 September 2013, vol 567, col 267

¹²⁶⁸ HC Deb 3 September 2013, vol 567, cols 191

¹²⁶⁹ HC Deb 10 September 2013, vol 567, col 890

Although many of the Committee's recommendations were unsuccessful, the Government supported one of the amendments put forward by the Chair of the PCRC 'who has worked with parliamentary counsel to produce amendment 151'.¹²⁷⁰ There were also further commitments to include 'clear words in the Bill...that meet the proposals of the Select Committee on Political and Constitutional Reform'.¹²⁷¹

Regardless of the number of accepted recommendations and successful amendments, and not to in any way detract from the tangible impact the Committee had in this sense, there is a much wider influence which the Committee, and particularly through its Chair, employed via the medium of its work on the Government's Lobbying Bill. This was the opportunity for the Committee, from an established position of respect and a level of expertise, to highlight widely and stridently the requirements of 'good' law-making and the relationship that *should* exist between Parliament and Government.

The PCRC took the opportunity, during the legislative process of the Lobbying Bill, to make general recommendations about what should be 'standard practice' for Bills and suggested that an amendment be made to the Standing Orders to 'include words similar to these':

"No public Bill shall be presented unless a) a draft of the Bill has received pre-legislative scrutiny by a Committee of the House or a joint Committee of both Houses, or b) it has been certified by the Speaker as a Bill that requires immediate scrutiny and pre-legislative scrutiny would be inexpedient."¹²⁷²

3.2. Timeframe - Departmental Business Plans

¹²⁷⁰ HC Deb 9 September 2013, vol 567, col 789 – see col 800: Amendment 151, page 51, line 35, at end insert—

'(2) But "payment" does not include any sums payable to a member of either House of Parliament— (a) under section 4 or 5 of the Parliamentary Standards Act 2009 (MPs' salaries and allowances), (b) pursuant to a resolution or a combination of resolutions of the House of Lords relating to expenses and allowances for its members, or (c) otherwise out of money provided by Parliament or out of the Consolidated Fund. (6A)'. — (Miss Chloe Smith.)

¹²⁷¹ HC Deb 10 September 2013, vol 567, col 858 (Allen's comments 'thanking' the Minister)

¹²⁷² PCRC, *The Government's Lobbying Bill*, (HC 2013–14, 601-I) 100

The legislation on lobbying provided an example of how one could utilise the business plan to monitor or track progress. The Number Ten website's online Business Plan Update provided some indications of timeframe: Action 3.8.iii '*Publish a White Paper and draft legislation on establishing a statutory register for lobbyists*' Scheduled start date: Jul 2012, Scheduled end date: Mar 2013.¹²⁷³ This action (at 14 June 2013) was described as 'in progress' and 'overdue'.¹²⁷⁴ A revised scheduled end of date of July 2013 was subsequently met and the action was later described as 'complete' with the note that the 'Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Bill' was introduced on 17 July.¹²⁷⁵ Simultaneously, the Cabinet Office's *Structural Reform Plan Monthly Implementation Update* for May 2012 confirmed the status of action 3.10(i) – 'Pursue detailed agreement on limiting donations and reforming party funding (end 2014)' – as 'work on-going'.¹²⁷⁶ In August 2013, this 'action' (re-numbered as 4.4i) was classified as complete, with the note that 'Cross-party talks on reforming party funding have now formally ended, without agreement. Significant reform of third party campaigning is included in the *Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Bill*'.

The Bill received Royal Assent on 30 January 2014 as the *Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Act 2014*

3.3. Conclusion

In summary whilst the PCRC's aims in relation to the lobbying legislation – along with the suggestions put forward by all key stakeholders – were far from realised there was at least an acute realisation on the part of Government that it should, at the very least, acknowledge the work which had been done. It did this most explicitly by including, in the Green Paper consultation on lobbying, a summary of the PCRC evidence sessions. The Committee's flexible working style was also evident in this context with the adjustment it

¹²⁷³ <<http://transparency.number10.gov.uk/business-plan/1/78>> (accessed 9 July 2012)

¹²⁷⁴ According to the No. 10 Transparency review

¹²⁷⁵ <http://transparency.number10.gov.uk/business-plan/1/9> (accessed 12 August 2013)

¹²⁷⁶ See: www.number10.gov.uk/wp-content/uploads/2012/06/CO-SRP-update-may-2012v2.pdf

made, when its (second lobbying) inquiry was already underway, to examine a much larger proportion of the Bill than it had originally intended.

PART III – Conclusions

Chapter Eight: Evaluating the Work of the Political and Constitutional Reform Committee

1. Introduction and Contextual Setting

‘[I]n judging the work of committees, in explaining and discussing them in terms of their function, we must always take into account the institutional system to which they belong.’¹²⁷⁷

The advent of Fixed-term Parliaments ‘which provides some security against Committee work being disrupted by an early general election’ enabled the Committee to plan its work programme strategically ‘over the course of a Parliament’.¹²⁷⁸ Such strategising and forward-planning on the part of the PCRC, as an example of ‘best practice’, has been mentioned by a number of those with whom I have held interviews, for example, taking a strategic view, literally sitting down at the start and thinking ‘Right, we’ve got five years, what are we going to do with it?’ was one of things, in the words of a Committee clerk, which ‘from the outside, looked most impressive’. Often Committees work from one inquiry to the next rather than thinking ahead over the length of a Parliament or longer-term, so the PCRC having a sense of a plan was perceived to be a ‘very welcome thing’.¹²⁷⁹ This more focused and long-term planning, which was possible in the context of the 2010 Parliament, is what largely enabled the Political and Constitutional Reform Committee to create a lasting legacy.

Committees are at their most successful, in terms of tangible influence on Government policy, when they make recommendations which are both specific and, generally, limited in scope. This is often more straightforward to achieve in terms of legislative scrutiny: for example, in the words of the Committee Chair, ‘the Government adopted many of the Select Committee’s

¹²⁷⁷ Wheare, *Government by Committee* (n113) 1

¹²⁷⁸ PCRC, *The work of the Committee in the 2010 Parliament* (HC 2014-15, 1128) 56-57

¹²⁷⁹ Private Interview with Committee Clerk

proposals. It was not done in a partisan or partial way. There were things that we discovered and could help the Government with to produce a better Bill.’¹²⁸⁰ The more obvious success which can be achieved in relation to bringing about, or contributing to, specific amendments to legislation¹²⁸¹ does not, however, preclude Committees from simultaneously including in their Reports some over-arching aims and visions of reform, nor indeed, of availing of the opportunity to highlight wider areas of concern. It was doing this in a strategic and distinct sense which set the PCRC apart from most. There is both a pragmatic operational purpose and a wider instrumental value in the approach adopted by the Committee, of endorsing and supporting some Government proposals, *in addition* to raising concerns and highlighting areas for reform or amendment. This can be observed in a particularly obvious manner through the PCRC’s work on the Recall legislation¹²⁸² and in relation to proposed reforms of the Lords, where the Committee suggested ‘that it would be entirely possible for the Government to take on board the points made in this Report without endangering either the principle or the process of their reforms’.¹²⁸³ The PCRC throughout its term successfully navigated balancing ‘big’ ideas with specific and smaller suggestions. The PCRC’s long-term project into codification, in particular, should be viewed as a constructive piece of constitutional research which is the first of its kind in the context of Select Committees. There was certainly no risk of the voraciously independent PCRC failing the ‘important question’, in studying the work of Committees, posed by Wheare, of ‘whether the committee itself is actually operating or whether it is merely a formal façade for the action of others’.¹²⁸⁴

2. Demonstrable Commitment and Innovation in Working Methods

Throughout its five-year term, the PCRC ‘never missed a quorum’ and ‘took its job very, very seriously’;¹²⁸⁵ for example, it ‘took evidence in the recess’¹²⁸⁶ to ensure that the Lobbying Bill would receive adequate scrutiny. Conscious of external perception and (limited) resources the Committee never went on a foreign trip, instead restricting visits to the seats of the

¹²⁸⁰ Graham Allen MP, HC Deb 3 June 2015, vol 596 col 716

¹²⁸¹ I have categorised 16 of the PCRC’s reports as legislative review in one way or another.

¹²⁸² Discussed above, chapter six, part b

¹²⁸³ PCRC, *Seminar on the House of Lords: Outcomes*, (HC 2010–12, 961) 4

¹²⁸⁴ Wheare, *Government by Committee* (n113) 10

¹²⁸⁵ HC Deb 3 June 2015, vol 596 col 714

¹²⁸⁶ Graham Allen MP, HC Deb 3 June 2015, vol 596 col 715

various devolved administrations at Holyrood, Stormont and Cardiff. This is not to suggest that it adopted an inward-facing approach; although the nature of the PCRC's work was on the British constitution it took evidence from and inquired into the practice in other States, for example, New Zealand's experience with a Cabinet Manual.

The Liaison Committee noted some years ago that '[W]hen Select Committees have been prepared to experiment and innovate, this has often increased their effectiveness'.¹²⁸⁷ Examples cited included the 'involvement of a range of experts in seminars to plan programmes of work; committees setting and reporting on objectives for the effectiveness of their work; systematic monitoring of action on recommendations by the Government and others'.¹²⁸⁸ These were standard practice for the PCRC which was notable in its adoption of innovative means to engage, not just with Government but more widely, including, with some notable success, with the public.

The Committee's working methods involved utilising a variety of means of inquiry, including, of course, the traditional witness sessions held in public. Although Select Committees' evidence sessions and inquiries are generally held in public, and only deliberations about the reports themselves tend to happen behind closed doors, the opportunity nevertheless may be taken to hold sessions in private. This decision lies with the Committee, and it might be deemed appropriate to hold a seminar in private, perhaps to enable people to express their views more frankly than they might feel comfortable doing on the record.¹²⁸⁹ The PCRC's seminar on the House of Lords – held under Chatham House Rules - falls into this category. On a number of occasions the PCRC organised 'one-off' evidence sessions on particular areas of interest. Many of these, for example the sessions on Human Rights and the idea of a British Bill of Rights, were approached in the context of the large scale inquiry into constitutional codification. In relation to the contentious matter of prisoner voting the PCRC considered the constitutional issues relating to the courts and Parliament and 'potential collisions between the courts and parliament in light of the Hirst issue' through an evidence session – predominately focused on a Think Tank Report which had been authored by one of the

¹²⁸⁷ Liaison Committee (HC 1999-2000, 300) (n54) 24

¹²⁸⁸ *ibid*

¹²⁸⁹ Correspondence with Committee Clerk

witnesses.¹²⁹⁰ This was soon after the Parliamentary debate on prisoner voting, which had itself been informed by the earlier PCRC Report.¹²⁹¹ During this session Eleanor Laing, the de facto Deputy Chair, led on the questioning and demonstrated how the skills, knowledge and expertise possessed by Select Committee members can make a valuable contribution to successful Committee work. A line of direct questioning, in which Laing's legal background was evident,¹²⁹² got to the crux of the matter succinctly in the, clearly, limited time available.¹²⁹³

The PCRC subsequently held sessions 'to examine the approach and views of most of the members of the newly established Commission on a UK Bill of Rights'.¹²⁹⁴ It was a measure of regard for the Committee, and its reputation, that the vast majority of the members of the Commission found time to accept the PCRC's invitation to give evidence.¹²⁹⁵ A further acknowledgment of this came via an explicit comment – in response to Allen's remark that a parallel could be drawn between the working methods of the Commission and those of a Select Committee – by the Commission's Chair that 'one benefit of this morning is not just for you to hear from me but for me to hear from you'.¹²⁹⁶ The Commission, of course, was 'not a publicly appointed Commission satisfying Nolan principles...[but rather] an ad hoc body set up to deal with what is essentially a political issue and to see whether there can be a high common factor of agreement'.¹²⁹⁷ It thus experienced similar underlying political pressures to those which have to be 'managed' in the Select Committee context. It may have been this aspect which led to some 'robust' questioning by members of the Committee, which was not in line with the Committee's usual good practice of non-partisanship, for example, Hunt's

¹²⁹⁰ Michael Pinto-Duschinsky, *Bringing Rights Back Home: Making human rights compatible with parliamentary democracy in the UK* (Policy Exchange, 2011)

¹²⁹¹ Discussed in chapter five

¹²⁹² She was also then Chairman of the Executive Committee of the Society of Conservative Lawyers

¹²⁹³ PCRC, *Constitutional issues relating to the courts and Parliament* - oral evidence - 3rd March 2011, HC 839-i

¹²⁹⁴ PCRC, *UK Bill of Rights Commission* - oral and written evidence - 9 and 16 June 2011, HC 1049-i and -ii (First oral evidence session, 9 June 2011: Witnesses - Sir Leigh Lewis KCB, Chair; and Anthony Speaight QC, member, UK Bill of Rights Commission; Second oral evidence session, 16 June 2011: Witnesses - Lord Lester of Herne Hill QC, member; Martin Howe QC, member; Professor Philippe Sands QC, member; and Baroness Kennedy of The Shaws QC, member, UK Bill of Rights Commission)

¹²⁹⁵ Jonathan Fisher and Professor Sir David Edward did not attend; Michael Pinto-Duschinsky was unable to attend either of the sessions but instead submitted written evidence, which was subsequently published by the PCRC.

¹²⁹⁶ Q24, HC 1049-i

¹²⁹⁷ Q62, HC 1049-ii

criticism of the Commission's members¹²⁹⁸ and pressing Anthony Speaight on his position in relation to a potential new statute,¹²⁹⁹ seemingly using the opportunity primarily to make party political points.¹³⁰⁰ Turner's questioning of Lord Lester on the misleading tendencies of the media was another example of a relatively aggressive style.¹³⁰¹ It was clear throughout these sessions that the 'political' and controversial subject of a prospective British Bill of Rights was something in which a number of the Committee members had a strong interest. The Chair explicitly noted that there were a number of different perspectives¹³⁰² and attempted to, in part, address the difficulties inherent in such an inquiry by asking each witness the same question – whether they had a preconception on the matter.

3. Unanimity or Balancing of Views?

This leads on to a recognition of the challenge faced by Select Committee Chairs in striking a balance between retaining a stable, consensual approach and yet ensuring that they keep the more 'difficult' members on board. This inherent difficulty was a common theme which arose in my discussions with Chairs, members and clerks of the Select Committees and recognised as of particular importance, to maintain 'the most important and distinct cultural trait of commons select committees, namely that MPs leave party politics at the committee room door'.¹³⁰³

All of the PCRC Reports were unanimous, which is itself something of a remarkable achievement. To achieve consensus, Committee Chairs openly admit requires a lot of diplomacy; Allen explained that the work of his Committee was 'very consensual' and acknowledged that one of his 'themes all the way through was...to [have] the Committee behind him' whilst recognising that there were 'awkward people on the left and the right'.¹³⁰⁴ In the words of one Committee member, the PCRC 'contains the entire political spectrum,

¹²⁹⁸ Q13-14, HC 1049-i

¹²⁹⁹ Qs 46-48, HC 1049-i

¹³⁰⁰ See for example, Q53, HC 1049-ii

¹³⁰¹ Q68, HC 1049-ii

¹³⁰² Q52, HC 1049-ii

¹³⁰³ Christopher Tyler, 'Three simple ways to strengthen our parliamentary democracy' *The Guardian* (4 March 2011)

¹³⁰⁴ Private Interview with Graham Allen (Chair of the PCRC 2010-15)

from the deepest red to the densest blue. Somehow or other, the reports, with compromise and good sense from the Chairman—he acts as a peacemaker and compromise seeker—turn out to be unanimous’.¹³⁰⁵ Bernard Jenkin, Chair of PACAC observed that ‘unanimity is so much more powerful’ than discord or producing minority reports.¹³⁰⁶ This is particularly important when it is borne in mind that ‘Select Committees exercise influence rather than power, and the extent of that influence rests on the quality of the evidence that they gather and the use they make of it in constructing well-argued reports’.¹³⁰⁷ On occasion, though, it has been explicitly noted that the Committee members hold different views.¹³⁰⁸ One final point worthy of observation in this context, is that the procedures in place with regard to changing membership can result in unanimity being *assumed*; that is, the system is such that a member remains a member until they have been replaced, and this is the case even if it is apparent that a member has departed.¹³⁰⁹

A related matter is that of retaining interest on the part of all members when, as was the case with some of the PCRC’s work, the matters under inquiry were focused in one direction – that of greater codification. It was indicated by some members that they held differing views at least in so far as how pressing a reform might be, for example, on whether or not a constitutional convention was needed for the UK in which context one member commented, that as the Government’s ‘response states, there is no public demand for a lot of these changes’.¹³¹⁰ These comments were made during a Westminster Hall debate called by Allen on ‘Conflict Decisions and Constitutional Reform’.¹³¹¹ The wider response to this was interesting with MPs expressing positive sentiments towards the Committee, describing its reports as ‘important, thorough and rigorous’¹³¹² and Allen, who was praised for his ‘brilliant chairmanship of the...Committee’¹³¹³ This particular example of ‘having two debates [On Parliament’s role in conflict decisions and on the idea of a constitutional convention for the

¹³⁰⁵ HC Deb 19 June 2014, vol 582, col 145WH

¹³⁰⁶ Private Interview with Bernard Jenkin MP (Chair of PACAC)

¹³⁰⁷ Richard Kelly, ‘Select Committees: Powers and Functions’ in Alexander Horne, Gavin Drewry and Dawn Oliver (eds), *Parliament and the Law* (Hart Publishing 2013) 162

¹³⁰⁸ See amendments tabled to the *Fixed-Term Parliaments Bill* - discussed above, chapter six, part a

¹³⁰⁹ Private interview with Committee Member

¹³¹⁰ HC Deb 19 June 2014, vol 582, col 145WH; and private interviews conducted

¹³¹¹ HC Deb 19 June 2014, vol 582, col 145WH

¹³¹² HC Deb 19 June 2014, vol 582, col 151WH

¹³¹³ HC Deb 19 June 2014, vol 582, col 151WH

UK] in one [was] described as a novel and wonderful idea.¹³¹⁴ The Minister of State at the Cabinet Office, Greg Clark was also positive noting that it was ‘useful...that the Committee has given us the opportunity to debate these issues’ and commenting that Allen ‘presides with great accomplishment over the Committee...accurately described as comprising a lot of the most thoughtful and well-motivated people dealing with this issue.’¹³¹⁵

4. What of Overlap with Other Select Committees?

A difficult issue can arise in relation to instances where more than one Select Committee chooses to inquire into the same subject matter. This is not something which can be addressed or affected by outside influence as the ability to decide upon its work programme is a particularly important factor in ensuring the independence and freedom which the Select Committees have. Indeed, at times, overlap and apparent duplication within the work of Committees can be hugely beneficial, enabling a more thorough inquiry and a wider range of views to be aired. A clear example of overlap/duplication which was complementary rather than problematic occurred with inquiries of the PCRC and the Constitution Committee into the succession to the Crown in which markedly similar issues were addressed by both committees.¹³¹⁶ Whereas, in relation to scrutiny of the draft Cabinet Manual the duplication in terms of evidence sessions and the overlap of witnesses provided a missed opportunity for joint hearings to be held.¹³¹⁷

5. Wider Benefits of Select Committee Membership – ‘Education’ of Members

The educational aspects to which I have referred above,¹³¹⁸ can be observed in various respects, for example, the role which two PCRC Committee members performed as part of the Joint Committee formed to consider the draft Bill on House of Lords Reform enabled them to both bring experience gained through the PCRC to the Joint Committee and to take back additional experience obtained by serving on the Joint Committee to the PCRC.

¹³¹⁴ HC Deb 19 June 2014, vol 582, col 151WH

¹³¹⁵ HC Deb 19 June 2014, vol 582, col 154WH

¹³¹⁶ Discussed above in chapter five

¹³¹⁷ Discussed above in chapter four

¹³¹⁸ Throughout the case studies

Indeed, one of these members (who served on both Committees) Tristram Hunt referred explicitly to a conversation about the 'relationship between the executive and the legislature' that the Joint Committee had had during a PCRC evidence session with Nick Clegg, in that particular instance to ask whether it was 'still Government policy, having reduced the size of the Commons by 10%, also to reduce the size of the executive by 10% for the next Parliament?'.¹³¹⁹ The other, Eleanor Laing, told me that 'the inclusion of members of the PCRC on the Joint Committee provided an opportunity for the valuable research undertaken by the PCRC to feed in to the Joint Committee's work'.¹³²⁰

6. Role of Chair

The Chair of a Committee is certainly a central factor in shaping that Committee and its work; this influence is further enhanced where other Committee members are less experienced, for example with the PCRC where five of the initial members were newly elected to Westminster.

Although there is no direct comparator, as Graham Allen was the first, and only, Chair of the PCRC, it is difficult to conclusively to determine to what extent one can attribute the style of the Committee and its work programme to the individuals involved. Some significant weight can be placed upon comments from those I interviewed (including former Committee members) who thought there was little doubt that much of the PCRC's work was driven by its Chair, one described the PCRC as 'very much the Graham Allen Committee'.¹³²¹ Allen, was a long-term proponent of democratic revival and reform, described on his website as 'one of Labour's most enthusiastic proponents of constitutional reform' who 'supports proportional representation for Westminster and a fully elected House of Lords'.¹³²² It may also be of relevance that during the 2010 Parliament, when serving as the Chair of the PASC, Bernard Jenkin, appeared to be interpreting his Committee's remit in a more traditional sense than

¹³¹⁹ PCRC, *The Coalition Government's programme of political and constitutional reform – oral evidence and written evidence – 19 April 2012* (HC 2010-12, 178 [incorporating HC 358-ii, Session 2010-12]) Q186

¹³²⁰ See above (n791)

¹³²¹ Private interview with Committee Clerk

¹³²² Extracted from Allen's website: <<http://grahamallenmp.wordpress.com/news1/>>

his predecessor, Tony Wright, which had perhaps created more of a 'gap' which Allen and the PCRC stepped in to fill.

Allen had been an MP since 1987, and by 2010 when he was elected Chair of the PCRC had a wealth of experience of the Parliamentary system – predominately from the backbenches but with a stint as a shadow constitutional affairs spokesman from 1992-94 and, as a whip under the Blair Government from 1997-2001.¹³²³ This experience, combined with a clear passion for constitutional reform, played a significant role in getting the PCRC not only up and running quickly but also ensuring it embarked on significant and relevant work at an early stage. From an external perspective there were obvious strengths in having a Chair, whose 'idiosyncratic campaigning on political reform issues gave him a strong reputation as a campaigner on the importance of independence for backbenchers...[and was] expected to be a strong advocate for change and will not hold back when it comes to pressuring Nick Clegg on slow progress'.¹³²⁴ There is, however, another potential result, of this passion for reform and 'reputation as a radical and critical Backbencher, tirelessly tabling questions and presenting Bills aimed at democratising Parliament and the constitution'¹³²⁵ though, 'Allen has sometimes been in danger of becoming new Labour's answer to Bill Cash, an obsessive not about Europe but about constitutional reform, prone to stopping people in the corridors of Westminster and haranguing them'.¹³²⁶ Allen had previously introduced (unsuccessful) Private Members Bills on the position of Prime Minister in 2001¹³²⁷ and in 2007 to 'provide for the drawing up of a written constitution'.¹³²⁸ Soon after taking the helm of the PCRC, he revealed that the Committee would 'investigate a written constitution.'¹³²⁹ Although the Minister for Political and Constitutional Reform made clear that 'the Government's position is that they are not in favour of moving to what is more accurately said to be a codified

¹³²³ And Member of the Committee of Selection 2000-01

¹³²⁴ Alex Stevenson, 'Crib sheet to Britain's new select committees', *politics.co.uk* (11 June 2010)

¹³²⁵ See: www.ncvo-vol.org.uk/.../Graham_Allen_MP_Political_and_Constitutional_Reform_biog.pdf; and www.revolts.co.uk/The%20Mother%20of%20All%20Rebellions.pdf

¹³²⁶ Jackie Ashley, 'The rise and rise of President Blair', *New Statesman* (5 November 2001)

¹³²⁷ *Prime Minister (Office, Role and Functions) Bill* – introduced HC Deb 28 November 2001 vol 375, cols 1008-12

¹³²⁸ *Constitutional Reform Bill* (HC 2006-07, Bill 114)

¹³²⁹ Michael Savage, *The Independent*, 'Give me Parliament with muscle, reform watchdog tells Clegg' (London, 19 June 2010)

constitution. Many of our constitutional principles are, of course, written down, just not in one document. It is not the Government's position to do so'.¹³³⁰

As soon as Allen was elected as Chair he met with the Deputy Prime Minister, before the rest of the Committee had even been chosen, 'and sought reassurances he will appear regularly before the committee'.¹³³¹ The independent streak in Allen's nature has been evident throughout his parliamentary career – he was, for example one of 139 Labour MPs to vote against the whip on Iraq (another of the 139 was Tony Wright).¹³³² Add into the mix Allen's previous Select Committee experience¹³³³ and a formidable Chair of the PCRC emerges.

7. The PCRC's Media Profile – A Summary

After the first twelve months of active work on the part of the Committee a national press search¹³³⁴ returned 28 separate¹³³⁵ references to the Committee and its Reports. In terms of column inches this might not seem to be a huge amount of attention, however, as 'there has been relatively little research on media reporting of select committees, either recently or historically'¹³³⁶ any comparison made on the basis of a single parliamentary session, whilst worthy of mention, will be largely inconclusive. To borrow some figures from Kubala's detailed study of the media and Select Committees (a study covering an earlier time period) will not lead to a scientific conclusion but helps to give one a general impression. In the years 2005-07, the Select Committees which received the highest media coverage were the Treasury Committee, with references in twelve articles, followed by the Culture, Media and Sport Committee, which was referred to in six articles.¹³³⁷ From this the general impression

¹³³⁰ HC Deb 1 December 2010, vol 519, col 845

¹³³¹ Michael Savage, 'Give me Parliament with muscle, reform watchdog tells Clegg' *The Independent* (19 June 2010)

¹³³² Note I have flagged up the independent nature of not only Wright (no longer an MP) but also that of his successor as Chair of the PASC – Bernard Jenkin – there appear to be a number of parallels which may be drawn.

¹³³³ Member: Public Accounts 1988-91, Reform of the House of Commons 2009-10

¹³³⁴ Various searches via Nexis UK – August 2011 (repeated search at intervals through the parliament). Search terms used were: '*political and constitutional reform committee*'; '*committee on constitutional reform*' and '*constitutional reform committee*'.

¹³³⁵ Duplicate references (such as different editions of the same newspaper) discounted from total

¹³³⁶ Marek Kubala, 'Select Committees in the House of Commons and the Media', (2011) *Parliamentary Affairs* 64(4) 694, 700

¹³³⁷ *ibid* 705

one begins to develop is that the PCRC was achieving a relatively high level of coverage at an early stage.¹³³⁸

Over the PCRC's five-year term there were over 800 references made to the Committee and its work via media outlets in the United Kingdom but more pertinently some 150 of these were in the 'quality' broadsheets. Regional press (particularly in the devolved nations) made frequent references to the Committee's work in matters relating to devolution.¹³³⁹

Although it has been suggested that 'an unreported but authoritative report is likely to be less influential than a similar report which receives wide coverage'¹³⁴⁰ and whilst there is a general acceptance that 'there is a relationship between media coverage and influence, albeit one that is hard to define'¹³⁴¹ the reporting of Select Committee work is merely one aspect, and a relatively insignificant one at that, when the matters covered in a committee's report are themselves particularly high profile and newsworthy, of determining the overall influence of a committee.

8. Evaluating the Influence of Parliamentary Committees

Wheare suggested a three-fold 'criteria of success' by which the operation of a committee might be evaluated. These were: (i) it is the job of a committee to come to a conclusion, to decide something; (ii) they must be so composed that they are fit to decide the matters referred to them; and (iii) 'is it doing the job?'.¹³⁴² Having considered the work of the PCRC across its various strands¹³⁴³ there can be little doubt that these criteria were fulfilled, the

¹³³⁸ Of course, there are a number of other factors which need to be considered, for example, how topical and/or contentious the subject matter of the Committee's inquiries is, the consistency of coverage through a time period – assuming 'spikes' of coverage around the publication of reports or the announcement of a new inquiry. Hence such a comparison should not be accorded undue weight.

¹³³⁹ Media searches between the first mention of the PCRC in Parliament (3 June 2010) through to dissolution on 30 March 2015

¹³⁴⁰ David Natzler and Mark Hutton, 'Select Committees: Scrutiny a La Carte?', in Philip Giddings (ed), *The Future of Parliament: Issues for a New Century* (Palgrave, 2005)

¹³⁴¹ *ibid*

¹³⁴² Wheare, *Government by Committee* (n113) 10

¹³⁴³ Chapters four to seven above.

question arises though as to where the experience of this Committee can illustrate where improvements might be made.¹³⁴⁴

One general point, which would contribute greatly to increased influence on the part of the Committees, relates back to the, at times, tense relationship between the Executive and the Parliament. As the former PCRC Chair suggested 'if only they [Government] realised that they should have a partnership with the House, rather than a relationship of domination and subordination...it is a great pity that they do not do that.'¹³⁴⁵

Recent political science research into the nature of 'nonverbal' behaviour in the context of hearings before Parliamentary Committees suggests that 'nonverbal messages may influence – either consciously or not – the attitudes and behaviours of select committee members, particularly in the form of persuasion'.¹³⁴⁶ The 'judgements' of Committees are 'on-going and cumulative assessments of ministers and experts' formed through 'deliberative exchanges'.¹³⁴⁷ 'In this way, both the deliberations and the judgements are *dynamic* and inherently *interactional*'.¹³⁴⁸ Schonhardt-Bailey cites the work of the PCRC in noting that, as explained throughout this thesis, the 2010-15 Parliament was 'especially important for select committee activity, given the much greater prominence of these committees following the key reforms of 2010 which among other things, created the election of committee members and chairs, thereby stripping the power of the party whips to appoint these members and thereby lent the committees greater autonomy in holding Government to account'.¹³⁴⁹ It is now indisputable that the Select Committees are a firmly established part of the Westminster furniture as a 'critical part of the checks and balances within our Parliamentary process'.¹³⁵⁰ A recent IPSA Report which reviewed the additional salaries paid to Chairs of Select Committees,¹³⁵¹ following a consultation, recommended that the current salary of £15,025

¹³⁴⁴ Some suggestions are made below in chapter nine.

¹³⁴⁵ Graham Allen MP, HC Deb 3 Jun 2015 vol 596 col 715

¹³⁴⁶ Cheryl Schonhardt-Bailey, 'Nonverbal contention and contempt in U.K. parliamentary oversight hearings on fiscal and monetary policy' (2017) 36(1) *Politics and the Life Sciences* 27, 3

¹³⁴⁷ *ibid* 14

¹³⁴⁸ *ibid*

¹³⁴⁹ *ibid* 3

¹³⁵⁰ Robert Neill MP, Chair of the Justice Select Committee cited in Independent Parliamentary Standards Authority, *Pay for Chairs of Committees – Final Report*, May 2016 p 4 para 9

¹³⁵¹ Reviewed in first year of each Parliament as per IPSA's statutory obligation

was appropriate¹³⁵² noting that ‘the workload of a Chair is highly varied and can be significant’.¹³⁵³

9. The ‘Value’ of Constitutional Reform

In a broader sense, the ‘value’ or importance of constitutional reform is itself is a matter of disagreement, for example, as Tony Blair’s former adviser, John McTernan, argued ‘[C]onstitutional Reform is a waste of time, pure and simple. It never actually achieves its avowed end of reconnecting the voters with democratic institutions...If the Tories give Nick Clegg his head on Lords Reform, two years of government time will have been thrown away on an issue far removed from public concerns’.¹³⁵⁴ Nonetheless, as the Leader of the House and Graham Allen argued at the time, the Government *did* have a constitutional reform agenda and that *did* need to be scrutinised.

The observations of the DPM on this matter, in evidence to the Committee, when asked whether ‘the Government’s constitutional reform agenda has been successful’, were interesting:

Firstly, that where the public has been asked to either participate in or support change, the response has been less than enthusiastic, to put it mildly...Secondly, where the issues have touched upon what I call the mechanics of power within Westminster, it has very quickly got snarled up in power politics between the parties.¹³⁵⁵

There are also mixed views on whether time and resources were best deployed by the PCRC throughout its term; it was suggested to me by several of those I interviewed that although a

¹³⁵² Independent Parliamentary Standards Authority, *Pay for Chairs of Committees – Final Report*, May 2016 p4 para 7

¹³⁵³ Independent Parliamentary Standards Authority, *Pay for Chairs of Committees – Final Report*, May 2016 p 4 para 6

¹³⁵⁴ John McTernan, ‘David Cameron hasn’t got a grip on Tony Blair’s most important lesson’ *Daily Telegraph* (11 May 2011)

¹³⁵⁵ PCRC, *The Coalition Government’s programme of political and constitutional reform – oral evidence – 13 December 2012* (HC 2010-12, 834-i) Q24

proportion of the Committee's inquiries 'were timely and relevant to the situation that Parliament was in at that time, others, the constitutional convention stuff, the 'new' Magna Carta, written constitution' were obviously a reflection of the Chair's own areas, predominantly of academic interest and thus this work seemed 'like quite an indulgent use of Select Committee resources'¹³⁵⁶

It was, however, this innovative and unique work around codification which is the Committee's greatest asset now that it has been disbanded. A significant proportion of the PCRC's work can be categorised as relating directly to reforming constitutional process and procedure, primarily through possible codification.¹³⁵⁷ It did this through serious research in conjunction with an academic institution – Allen spoke of the importance of having 'academic sherpas...if you are to establish an independent resource and influence in the field' – and through this partnership the Committee created a collection of evidence-based, high quality resources that are there for future reference. In the words of a clerk, 'I can see from Graham's point of view probably this work has been worth it. It is there 'ready to be pulled off the shelf at the moment the country needs it. His Committee will look like a wise foresight, the legacy will be there'.¹³⁵⁸

The former PCRC Chair considers that having an 'external, what they would call, special adviser' in the form of an institution (rather than an individual) in order to 'muscle up the new select committee' was the most successful working method/innovation adopted by the Committee. He suggests that rather than being innovative and unusual that this 'should be standard practice or aspirational practice'.¹³⁵⁹ In Allen's words, 'I was fairly confident that we wouldn't last more than one term if we did the job well'.

¹³⁵⁶ Private interviews conducted

¹³⁵⁷ This category is particularly closely related to that of evidence collection and compilation

¹³⁵⁸ Private Interview with Committee Clerk

¹³⁵⁹ Private Interview with Graham Allen (Chair of the PCRC 2010-15)

Chapter Nine: The Legacy of the Political and Constitutional Reform Committee

Virtually everything I did was for posterity and that's a harder thing to sell than let's all get our name in the paper because our committee has put the knife into Government.¹³⁶⁰

1. Introduction and Contextual Setting

'When it is looked back upon, the work of this Committee in considering the political and constitutional reform in respect of the workings of a *coalition government* will be of great interest to those who examine these matters'.¹³⁶¹ During the Committee's inaugural evidence session, the DPM described 'an unprecedented moment of underlying consensus among the main parties that political reform must happen'.¹³⁶² There was a 'very strong sentiment in the country that our politics is not as good as people deserve and that we ought to be addressing some of these problems...they [the electorate] do feel that perhaps all of us could do better and that Government have a role in putting some of that right'.¹³⁶³ This correlation of particular events led to a fertile environment for constitutional and political change into which fell the two 'waves' of reform proposed by the Coalition Government: first, legislation on Fixed-term Parliaments, the AV referendum and boundaries, and draft Bill on Lords Reform; secondly, recall for MPs, regulation of lobbying, funding reform and others.¹³⁶⁴

The timing and circumstance were thus one important factor; another was the 'democratic change' brief which the DPM had 'insisted' upon and which provided 'the reason or excuse' for establishing the PCRC. Sir George Young, Leader in the House, at the time, was 'a believer

¹³⁶⁰ Private Interview with Graham Allen (Chair of the PCRC, 2010-15)

¹³⁶¹ PCRC, *The Coalition Government's programme of political and constitutional reform – oral evidence and written evidence – 19 April 2012* (HC 2010-12, 178 [incorporating HC 358-ii, Session 2010-12]) Q178 [emphasis added]

¹³⁶² PCRC, *The Coalition Government's programme of political and constitutional reform – oral evidence and written evidence – 15 July 2010* (HC 2010-12, 358-i)

¹³⁶³ PCRC, *The Coalition Government's programme of political and constitutional reform – oral evidence – 12 May 2011* (HC 2010-12) Q95; See also chapter seven above

¹³⁶⁴ PCRC, *The Coalition Government's programme of political and constitutional reform – oral evidence and written evidence – 15 July 2010* (HC 2010-12, 358-i) Q7

in Parliamentary reform’ and helped to facilitate the setting up of the Committee as Parliament was under an obligation to monitor the DPM’s policy remit.¹³⁶⁵ It was clear, at that point, that Government had, ‘in Nick Clegg, a constitutional reform agenda...which needed scrutinising...but it’s not massively surprising that the Coalition ended and [then] no one had that reform agenda’.¹³⁶⁶ Thus, much to the disappointment of its Chair the Committee was not reappointed; it was viewed, at least by Government, as being very much ‘of its time’.

The PCRC, however, during its relatively brief existence, had substantial impact and influence in a variety of forms; within Parliament, through effective evidence-based Reports, often ‘tagged’ in debates, which it produced to inform Parliamentarians; and on Government, in terms of engineering specific amendments to legislation, and in the wider sense of contributing to long-term policy formation. Most significantly of all, the Committee’s long-term strategic work around codification has had (and will continue to have) influence through engagement with the public, external bodies and via the creation of a unique and extensive body of research – this is its greatest legacy. The work of the PCRC was ‘not on the immediate, the current or the things that are in the headlines of the day, but on issues that are of deeper importance.’¹³⁶⁷

2. Over-arching Theme of Constitutional Codification

The PCRC’s Report, on a ‘new Magna Carta’, represented ‘the most comprehensive attempt so far to provide different detailed models of a codified constitution for comparison and consideration’¹³⁶⁸ which, in itself, is a remarkable achievement. The added flexibility which the PCRC had, as a Select Committee, to determine its own work programme enabled it to focus its work on wide-ranging reform, whilst Government, by contrast, (even when committed to change) faced multifarious demands and brought about smaller, more evolutionary amendments to the Constitution. As Allen commented, ‘[Y]ou [the

¹³⁶⁵ Private Interview with Graham Allen (Chair of the PCRC 2010-15) [quotes only – rest my views]

¹³⁶⁶ Private Interview with Committee Clerk

¹³⁶⁷ HC Deb 19 June 2014, vol 582, col 145WH

¹³⁶⁸ PCRC, *A new Magna Carta?* (HC 2014-15, 463) 9

Government] can carry on amending piecemeal Britain's unwritten constitution while we will carry on digging with very large spades.'¹³⁶⁹

This innovative and long-term project mirrored the approach adopted by the Committee in many of its more discrete smaller-scale inquiries. A pragmatic and constructively critical style can be considered as the hallmark of the PCRC. The Committee performed a crucial and, often, unique role in compiling information and evidence to contribute to informed debate both within Parliament and outside the Westminster and Whitehall realm. In this manner the Committee had a greater influence on policy and the wider function of 'education'¹³⁷⁰ than if it had followed what might be considered to be an 'easier' path of predominately criticising Government or in Allen's words 'gearing up, reading evidence in order to take a pot shot at Government' with a view to acquire a profile and attention through this route.¹³⁷¹ As White has suggested:

In posing the question of how the impact of parliamentary scrutiny can best be assessed, it is important to acknowledge the way in which measurement can influence behaviour. Where explicit or implicit rewards or sanctions follow from measurement (be these hard or soft, financial or reputational), behaviour may change. Sometimes this can be a force for good – driving up expectations and standards – but sometimes it can have a negative impact. For example, if the members of a select committee assess its impact, using quantitative measures, in terms of media coverage, this may lead them to seek publicity for its own sake, regardless of its nature. A more nuanced approach would be to make a qualitative as well as quantitative assessment of media coverage – in which less but better-quality coverage would be valued over a greater quantity of superficial coverage. This would point towards behaviour intended to engage the media in the committee's evidence and arguments rather than simply maximising coverage.¹³⁷²

¹³⁶⁹ PCRC, *The Coalition Government's programme of political and constitutional reform – oral evidence and written evidence – 19 April 2012* (HC 2010-12, 178 [incorporating HC 358-ii, Session 2010-12]) Q205

¹³⁷⁰ Of the Committee members and Parliamentarians and also much more broadly through its innovative engagement with external bodies and the public

¹³⁷¹ Private Interview with Graham Allen (Chair of the PCRC 2010-15)

¹³⁷² White (n5) p27

This more effective and nuanced approach reflects that utilised by the PCRC.¹³⁷³ An additional advantage of achieving a relatively high level of attention in the media is that it ‘also contributes directly to the broader effort to raise public recognition of select committees and of Parliament’s scrutiny role in general’.¹³⁷⁴ Through positive recognition in the higher quality media the external perception of the work of a Committee is further enhanced.

An average Select Committee inquiry lasts for approximately one year, so it was very unusual to have such a ‘long-running and continuous inquiry into codification’;¹³⁷⁵ this is where the five-year Parliamentary term, combined with the strategic approach adopted by the PCRC has made a particularly valuable and practically useful contribution. Another example of the innovative approach adopted by the Committee was that of explicitly addressing its recommendations, not just to the Government of the day but to ‘the leaders of all political parties...academics, think tanks’ and ‘the public’. Additionally, to ensure that its work was more widely accessible, in addition to the lengthy main Report,¹³⁷⁶ a short ‘popular guide’ for the lay reader, setting out key points and areas for readers to think about and engage with the discussion, was published.¹³⁷⁷

What was particularly valuable - and this was despite, rather than because of, views held by the Committee Chair - was the decision on the part of the Committee not to support, endorse or recommend that a codified constitution be adopted but, instead, to provide practical and detailed illustrations of ‘*how a written constitution could take shape*’.¹³⁷⁸

2.1. Academic and External Collaboration

Through its five-year project into a codified constitution for the United Kingdom, the Committee collaborated heavily with an academic partner institution and consulted and engaged with the public, in addition to taking evidence from more ‘usual’ witnesses. This

¹³⁷³ Discussed throughout

¹³⁷⁴ Marek Kubala, ‘Select Committees in the House of Commons and the Media’, (2011) Parliamentary Affairs 64(4) 694, 700

¹³⁷⁵ Private Interview with Committee Clerk

¹³⁷⁶ 425 pages

¹³⁷⁷ PCRC, *The UK Constitution: A summary, with options for reform* (March 2015)

¹³⁷⁸ PCRC, *A new Magna Carta?* (HC 2014-15, 463) 12 [emphasis added]

culminated in the publication of an extensive collection of evidence and, uniquely, ‘three blueprints’ or possible methods by which codification to a greater or lesser degree might be brought about. These were: a non-legal (but sanctioned by Parliament) Constitutional Code; a Constitutional Consolidation Act; and a Written Constitution.

After a widespread, and apparently successful, consultation exercise on these drafts, the Committee published a further Report.¹³⁷⁹ This material is now available to others in the future, whether other Committees, Governments or researchers who can now later pick up a Report and say ‘the work’s been done’.¹³⁸⁰ Specifically in relation to constitutional codification ‘there are three tremendous versions of a written constitution and in 15 years’ time someone can come along and they cannot now say ‘ooh, but there’s a lot of work to be done’, in a way they could go ‘I like that one of the three’.¹³⁸¹ A former Leader of the House, Sir Geoffrey Howe, described the valuable contribution that ‘the compilation and publication of a comprehensive and authoritative body of evidence from expert witnesses [can make] to the process of government’ and this is demonstrated clearly through the work of the PCRC.

The work of the PCRC has already been drawn upon by other Parliamentary Committees, in academic work and other projects, for example the work of the Constitution Unit; in particular the ‘Blueprint for a UK Constitutional Convention’¹³⁸² and ‘The Constitutional Standards of the House of Lords Select Committee on the Constitution’.¹³⁸³ It is likely also to be the starting point for many Parliamentarians’ researchers in the future, prompted by frequent references to the PCRC’s body of work in the House of Common Library Papers.

3. Best Practice and Standards for Future Committees’ Work

It was through the strategic and long-term approach employed by the PCRC that it has left an indelible mark by generated a huge body of research and one which has significant longevity.

¹³⁷⁹ PCRC, *Consultation on a new Magna Carta?* (HC 2014-15, 599)

¹³⁸⁰ Private Interview with Graham Allen (Chair of the PCRC 2010-15)

¹³⁸¹ Private Interview with Graham Allen (Chair of the PCRC 2010-15)

¹³⁸² Alan Renwick and Robert Hazell, ‘Blueprint for a UK Constitutional Convention’ (Constitution Unit, UCL, June 2017) 5

¹³⁸³ Jack Simson Caird, Robert Hazell and Dawn Oliver, ‘The Constitutional Standards of the House of Lords Select Committee on the Constitution’ (Constitution Unit, UCL, 2nd edn, August 2015)

It has paved the way for future Parliamentary Committees to learn from this example and to adopt a similar style in pursuing their aims. An early example of this might be said to be the PACAC's inquiry into civil service effectiveness; which that Committee's Chair has identified as incorporating 'three blue sky firsts' including amongst these academic research, a resource which the PACAC has engaged to conduct research amongst Ministers, Special Advisers (Spads) and officials largely through private interviews.¹³⁸⁴ Jenkin has also indicated that he considers PACAC to be the 'inheritor' of the PCRC's remit.¹³⁸⁵

3.1. Public Engagement

The debate about the reform, and strengthening, of Select Committees has 'generally focused on internal issues rather than on external relationships'.¹³⁸⁶ There is now a formal expectation, however, that Select Committees, as one of their core tasks, would 'assist the House of Commons in better engaging with the public by ensuring that the work of the committee is accessible to the public'.¹³⁸⁷ It has been suggested that the Liaison Committee's Report 'is likely to be interpreted...as a critical step in the history of parliamentary politics'.¹³⁸⁸ It has 'inserted a crack or a wedge' into the traditional way of viewing the role of Select Committees.¹³⁸⁹ The 'innovations' adopted by the PCRC in terms of engaging with the public; through consultation, social media, online surveys and informal events are good examples of recent 'best practice'¹³⁹⁰ and particularly relevant following the adoption of the new core task of 'public engagement'.¹³⁹¹

The PCRC utilised the Parliamentary Outreach Service to promote its consultation and raise awareness – it described this as 'a model for collaboration between select committee and

¹³⁸⁴ Private Interview with Bernard Jenkin MP, Chair of PACAC

¹³⁸⁵ Private Interview with Bernard Jenkin MP, Chair of PACAC

¹³⁸⁶ Liaison Committee (HC 2015-16, 470) (n39) 45

¹³⁸⁷ Liaison Committee, *Select committee effectiveness, resources and powers* (HC 2012-13, 697) 20

¹³⁸⁸ Liaison Committee (HC 2015-16, 470) (n39) 46

¹³⁸⁹ *ibid* 28

¹³⁹⁰ PCRC News Release, 'Constitutional reform should be scrutinised by a dedicated committee' (29 March 2015)

¹³⁹¹ As per the revised core tasks in Liaison Committee, *Select Committee effectiveness, resources and powers* (HC 2012-13, 697) – Core Task 10, as revised November 2012

outreach activity'.¹³⁹² One means through which this collaboration was a demonstrable success was the 440 responses received in relation to a questionnaire on codification issues. This was one means through which the Committee publicised its consultation – additionally, it held a series of 'expert seminars' each to address a specific aspect of the Constitution: Executive powers; local government; the House of Lords; and the judiciary. Seminars were also held in the devolved administrations and a conference, with some 80 participants, was held in December 2014. The Committee used social media to engage with the public via 'hashtags'¹³⁹³ and an online survey.

Numerous innovative techniques were adopted, for example, during 'Parliament Week' attendees at an event were asked to complete an online questionnaire. Another unique aspect of the Committee's work, and demonstrable means of public engagement, was the online open 'competition' it held for members of the public to draft a 'preamble for a written constitution'.¹³⁹⁴ Over 80 responses were received from members of the public, and over 40 of these in the under-18 category.¹³⁹⁵ The Committee achieved a high level of response throughout its consultation with 161 written submissions, and even more remarkably many of these were from members of the public. A former Foreign Secretary and a former First Parliamentary Counsel were among those responding to the consultation; this is an indication of the high regard which existed for the Committee and its work. This experiment reflects the high level of success which the PCRC can claim in relation to a general level of public engagement; which is arguably a more important function than ever before, not least as a result of the revised core tasks for Select Committees but more obvious still when the interests and work of a Select Committee align with those of media interest. This was something noted by a Committee member, who was then a fairly newly-elected MP, at the mid-way point in the five-year term of the PCRC, who commented 'I think select committees have more impact when they operate alongside the media'.¹³⁹⁶

¹³⁹² PCRC, *Consultation on a new Magna Carta?* (HC 2014-15, 599) 12

¹³⁹³ #UKConstitution; the Committee used Twitter throughout its term @CommonsPolCon

¹³⁹⁴ PCRC, 'Competition to write Preamble for modern Written Constitution for UK'

¹³⁹⁵ PCRC, 'Modern Written Constitution for the UK competition: under 18s'

¹³⁹⁶ Private correspondence, August 2013

To some extent the role of the Select Committees is that of encouraging debate on a matter – an area in which the PCRC excelled – both within Westminster and further afield, such as drawing issues to the attention of the media. If we accept that one of the functions of our Parliament is that of acting as a ‘distinctive forum for national debate’¹³⁹⁷ the work of Select Committees contributes greatly to this. If, however, one believes that this role – at least in relation to the Commons - has been ‘usurped as the forum for national debate first by public meetings, press and television and now by the Internet’¹³⁹⁸ again the Select Committees have a role to play in helping to ensure that Parliament is not overlooked.

3.2. Accountability

The additional flexibility which the PCRC possessed as a result of its unusual positioning, as neither a traditional departmental committee or an overarching committee, with a corresponding detailed and prescribed remit, enabled it to carry out a varied range of inquiry during its five-year term. According to one of its former clerks, who referred to the PCRC as a ‘non-departmental Select Committee’, it was hard to say that an inquiry was ‘outwith their remit’ as almost anything could be fitted under the ‘umbrella’ of political and constitutional reform.¹³⁹⁹

3.2.1. Departmental Business Plans

In addition to the specific examples considered above in terms of case studies,¹⁴⁰⁰ the PCRC performed scrutiny of the Constitution Group at the Cabinet Office - the team of civil servants and section of Whitehall which was ‘formed to take over responsibility for political and constitutional reform from the Ministry of Justice’ in 2010.¹⁴⁰¹ The Constitution Group comprised four ‘units’: the Elections and Democracy Division; the Parliament and Constitution

¹³⁹⁷ HL Deb, 4 May 2006, vol 681, col 619

¹³⁹⁸ See John Campbell, *Pistols at Dawn: Two Hundred Years of Political Rivalry from Pitt and Fox to Blair and Brown* (Jonathan Cape Ltd, 2009); and, for example, Harriet Harman, ‘The Commons Touch’, *The Guardian* (14 October 2004)

¹³⁹⁹ Private Interview with Committee Clerk

¹⁴⁰⁰ In chapters four to seven

¹⁴⁰¹ National Audit Office, *Briefing for the House of Commons Political and Constitutional Reform Committee: Cabinet Office Constitution Group* (April 2012) 2

Division; the Electoral Registration Transformation Programme; and the Devolution Strategy Division.¹⁴⁰² The Parliament and Constitution Division led the policy framework and legislation in those areas most closely related to the PCRC's work, for example, Fixed-term Parliaments, Recall of Members of Parliament, House of Lords Reform, the Cabinet Manual, reform of Royal Succession and a statutory register for lobbyists.¹⁴⁰³

The third 'priority' under the Cabinet Office Business Plan¹⁴⁰⁴ was to 'reform our political and constitutional system'; this was to involve supporting 'efforts to give power to people and communities by redistributing control away from Britain's over-centralised state'.¹⁴⁰⁵ In 2012/13 the budget allocated to this was approximately £14 million. These business plans, especially when combined with the National Audit Office Research, provided a high level of transparency which enabled the Select Committee to more effectively evaluate and measure the Government department's progress against the stated aims and objectives than might previously have been possible.¹⁴⁰⁶ The business plans were intended to enhance both internal and external accountability and it is the external aspect which is relevant not only from the perspective of the public (referred to as 'democratic accountability')¹⁴⁰⁷ but more to Parliamentary scrutiny bodies. Letwin's Ministerial Statement highlighted that 'Select Committees will...play a vital role in the task of holding the Government to account. Government Departments are contacting Select Committee chairmen to inform them of the new processes and to invite them to discuss the business plans in more detail'.¹⁴⁰⁸ Similarly, in evidence to the Public Accounts Committee, Ministers explained that 'these business plans are a tool both for us to ensure that the Departments deliver on the commitments that we made in the coalition agreement, and also for you and for other Select Committees, and for Parliament and for the public, to be kept abreast of how we are getting on with delivering

¹⁴⁰² Now the 'UK Governance Group' – which was established in June 2015 to lead the UK government's work on constitutional and devolution issues. It brings together under one command the Cabinet Office's Constitution Group, the Scotland Office, the Office of the Advocate General for Scotland and the Wales Office.

¹⁴⁰³ National Audit Office, *Briefing for the House of Commons Political and Constitutional Reform Committee: Cabinet Office Constitution Group* (April 2012) 3.1-3.6

¹⁴⁰⁴ Introduced in 2010

¹⁴⁰⁵ Cabinet Office, *Business Plan 2012-15* (31 May 2012) p2

¹⁴⁰⁶ Indeed, the inclusion of 'Impact Indicators' appeared designed to simplify the process of accountability still further.

¹⁴⁰⁷ 'PM's Speech on Business Plans' (8 November 2010)

¹⁴⁰⁸ HC Deb 8 November 2010, vol 518, cols 1-2W

those things—so it is a tool of accountability’.¹⁴⁰⁹ This was a ‘tool of accountability’ which the PCRC utilised; soon after publication of the Departmental Business Plans, the Chair wrote to the DPM with a series of questions, including addressing Fixed-term Parliaments, to which a response was received in December 2010.¹⁴¹⁰ This ability to utilise accessible source material should help to strengthen the ability of the Parliamentary Select Committees generally to succeed in an area in which they have often been viewed as performing poorly, namely, following up on positive Government statements in relation to Select Committee recommendations. White, for example, described committees as being ‘notoriously poor at following up to check what has happened’.¹⁴¹¹ Whilst the Departmental Business Plans certainly constituted a nod in the direction of greater transparency, Committee Chairs with whom I discussed them were united in the view that they were of very limited worth as a scrutiny or an accountability mechanism. One went so far as to suggest that they ‘weren’t meant to be useful’.¹⁴¹² It was suggested that one means of making them more practically useful would be to include this scrutiny in the standing orders when then might result in a systematic mechanism.

3.2.2. Relationship with Ministers

The regular evidence sessions, particularly in the early days, with the relevant Ministers, especially the Deputy Prime Minister, provide a useful insight into the tactics adopted by the Committee, and, in particular, its Chair. During a discussion on localism and decentralisation, for example, it was explained that the Committee was looking into the possibility of codifying the relationship between central and local government to try ‘to help the public debate along’.¹⁴¹³ The tone of many of these early encounters was friendly and even jovial at times although rather less so at later stages in the Parliament. Two related matters warrant mention here. First, the frequent changes of relevant Minister – one need only look to the

¹⁴⁰⁹ Public Accounts Committee, *Departmental Business Planning* (HC 2010-12, 650) Ev 20

¹⁴¹⁰ Letter from DPM to Chair of PCRC, 9 December 2010

¹⁴¹¹ White, ‘Parliamentary Scrutiny of Government’ (n5) p26

¹⁴¹² Private Interview with Graham Allen (Chair of the PCRC 2010-15)

¹⁴¹³ PCRC, *The Coalition Government’s programme of political and constitutional reform – oral evidence – 12 May 2011* (HC 2010-12) Q121; PCRC, *Prospects for codifying the relationship between central and local government* (HC 2012-13, 656)

participants in the evidence sessions to observe this.¹⁴¹⁴ Fortunately those changes were limited to the junior Ministerial positions rather than the DPM, by whom the overall policy is likely to have been directed. Secondly, despite the generally non-partisan approach adopted by most of the Committee, on occasion some members were overtly partisan and ‘political’, as the DPM responded to a question, from Tristram Hunt, ‘the political side is looming large this morning’.

During the 2010-12 session, through these meetings with Ministers, the PCRC had begun to pursue issues such as the creation of a House Business Committee presaged in the Wright Reforms and to which the Coalition Government had committed itself and in so doing it drew upon documents published by the Government, such as the *Programme for Government* and the Departmental Business Plans. The Minister for Constitutional Reform stated during questioning in May 2011, that there would be ‘no rowing back’ on the commitment to establish a House Business Committee, and that in the third year of the Parliament this would have happened. In April 2012, the matter was again raised and the ‘continuing commitment of the Government’ to bring it about during the third year of the Parliament (soon to commence) was reiterated.¹⁴¹⁵ The position had perceptibly shifted by October 2013. At the time of completing this thesis there is still no House Business Committee and it appears unlikely that one will be created. Thus in this instance pressure from the PCRC did not prove to be fruitful. It is worth acknowledging though that the added value which the creation of a House Business Committee might bring is far from universally agreed upon.

The ‘cordial’ relationship,¹⁴¹⁶ between the Committee and respective Ministers enabled steady, often gentle, pressure to be maintained on Government, for example, on strengthening the backbenches vis a vis the Government and, crucially, to improve legislative scrutiny. Regarding the latter, the DPM assured the Committee that:

¹⁴¹⁴ Harper, Smith, Clark, Gyimah

¹⁴¹⁵ PCRC, *The Coalition Government’s programme of political and constitutional reform – oral evidence and written evidence – 19 April 2012* (HC 2010-12, 178 [incorporating HC 358-ii, Session 2010-12]) Q208

¹⁴¹⁶ Private correspondence with Committee members

all the plans that we are now proceeding with [in the realm of political and constitutional reform] are not...being dealt with with the sort of rapidity that the early measures were taken, and we are absolutely certain – *we have listened to what you have said* – to make sure that proper pre-legislative scrutiny, proper parliamentary examination and scrutiny, is applied to the measures we propose.¹⁴¹⁷

This did not always play out in practice, however, and it was indicated by one Committee member that there was sometimes a feeling that the Committee was ‘an irritating obstacle to the work of Government, to be ‘managed’ or ‘a cross the Minster had to bear and that they couldn’t wait to get back to proper work’. This illustrates how crucial the Select Committee is as an instrument of Parliamentary scrutiny – whether or not they might wish to it is extremely difficult for Government to ignore a Committee. They are obliged at the very least to engage actively with the Committee in terms of evidence sessions and responses to Reports. The enhanced freedom and independence of the Committees brought about since 2010 combined with a greater public profile places additional (and welcome) pressure on Ministers to work with their respective Committees rather than attempt to side-line them, however discreetly.

4. General Problems facing Select Committees

Parliamentary Committees, despite being able to set their own agenda, are primarily reactive and this can involve making, what will often be unacceptable, recommendations to a Government where a policy is already underway in terms of implementation. The PCRC, by contrast, and arguably assisted by its more fluid remit and lack of a specific legislative oversight function,¹⁴¹⁸ sought to address concerns at the earliest possible stage, although, of course, within the overall constraints of a timeframe controlled by Government. The need to respond, on several occasions, at extremely short notice took up a notable proportion of the Committee’s time and could have severely curtailed its ability to be pro-active.¹⁴¹⁹ Here,

¹⁴¹⁷ PCRC, *The Coalition Government’s programme of political and constitutional reform – oral evidence – 12 May 2011* (HC 2010-12) Q161 [emphasis added]

¹⁴¹⁸ Unlike, for example, the Constitution Committee

¹⁴¹⁹ Discussed above, in chapter six, in relation to various pieces of legislation.

again, the long-term work plan, which the PCRC had set out, enabled it to adjust more easily than might otherwise have been the case, and, actually to incorporate knowledge gained from these inquiries into its wider work programme.

4.1. Lack of Adequate Response by Government

Despite all the positive improvements, there remain significant limitations for Select Committees. One example of particular interest in relation to the PCRC, is the extent to which recommendations and Reports are likely to receive a Government response when a Committee no longer exists,¹⁴²⁰ and, how decisions are made about whether or not to issue a response in such circumstances. The rules on the matter, such as they are, may be found in the most recent version of the Osmotherly Rules,¹⁴²¹ which was drafted with at least some involvement of the Liaison Committee – I had it confirmed that ‘[T]he Minister for the Cabinet Office, Rt Hon Francis Maude MP, was in consultation with the then Chair of the Liaison Committee, Sir Alan Beith MP’.¹⁴²² Unfortunately much lies in the gift of the relevant Government Minister. There is no obligation, far less a requirement, to respond:

[W]hen Parliament is dissolved pending a General Election ... Departments should continue to work, on a contingency basis, on any outstanding evidence requested by the outgoing Committee and on Government responses to outstanding Committee Reports. It will be for the newly-appointed Committee to decide whether to continue with its predecessor’s inquiries; and for the incoming administration to review the terms of existing draft responses ... An incoming Government may wish to publish such responses itself by means of a Command Paper’.¹⁴²³

A response received from a former Cabinet Office Minister was, however, somewhat heartening:

¹⁴²⁰ As was the case in 2015 for the PCRC

¹⁴²¹ Cabinet Office, *Guidance for officials from departments and agencies on giving evidence to Parliamentary Select Committees*, October 2014

¹⁴²² Private correspondence with Liaison Committee staff, August 2017

¹⁴²³ Cabinet Office, *Guidance for officials from departments and agencies on giving evidence to Parliamentary Select Committees*, October 2014, 75

Turning to the general question of how government departments respond to recommendations and reports from Committees that no longer exist, I was never myself asked for such a response -- so I can't tell you definitively how I would have gone about deciding what to do; but my feeling is that it would have depended on whether (a) the response was nearing completion just before the Committee ceased to exist or (b) either a successor-Committee or the House as a whole had made a request for a response. In either of these circumstances, I imagine that I would have felt inclined (circumstance 'a') or compelled (circumstance 'b') to respond.¹⁴²⁴

Nonetheless the majority of PCRC Reports published in the final session have not received, nor are they ever likely to receive, a response from Government.¹⁴²⁵ There is no obvious follow-up mechanism other than perhaps for individual members to raise questions as to when the Government intends to respond to Report X or possibly, as was suggested to me by some I interviewed, via the Liaison Committee. Neither of these is a particularly reliable or effective means – the former is likely to meet with a response in the negative and the latter will have many competing priorities. Thus one matter which warrants prompt reform relates to the ability of Government to neglect entirely to respond to Committee Reports after a Committee has been disbanded.

Another weakness in term of the effectiveness of the Parliamentary Select Committee can be observed in relation to the lack of adequate and on-time responses by Government to Select Committee Reports.¹⁴²⁶ By convention, Government provides a written response within two months of a Select Committee Report. A Liaison Committee Report indicated that too many Government responses to Select Committees were superficial and gave the impression that they have been drafted with only a cursory look at the summary recommendations, ignoring the analysis and the argument.¹⁴²⁷ It was this which led to the establishment of the Norton Commission.¹⁴²⁸ Complaints have also been made about the paucity of responses when they

¹⁴²⁴ Private correspondence with Rt Hon Sir Oliver Letwin MP (Minister for Government Policy 2010-15)

¹⁴²⁵ See Appendix D

¹⁴²⁶ Cabinet Office, *Guidance for officials from departments and agencies on giving evidence to Parliamentary Select Committees*, October 2014, 68

¹⁴²⁷ Liaison Committee, *Shifting the balance: select committees and the executive* (HC 1999-00, 300) 47

¹⁴²⁸ Hague, HC Deb 13 July 2000, vol 353, col 1094

are finally received with the Regulatory Policy Institute's Better Government Programme going so far as to describe Government Responses as 'models of evasion'.¹⁴²⁹

4.2. Competing Priorities

Other challenges faced by Committees relate to competing priorities on the part of members and frequent Ministerial reshuffles. In terms of the former issue, other commitments tend to take priority, for example, note the comments of a member upon arriving late at a PCRC evidence session who explained she 'was on a Bill Committee, so that tends to take precedence'.¹⁴³⁰ Another example is the result of research carried out by *The Guardian* newspaper, just before the 2001 General Election, in which Members of Parliament were asked to identify 'what they were proudest of having achieved since the previous election'. Most responses indicated something related to 'local community action' or constituency-focused matters¹⁴³¹ rather than parliamentary-focused work.

Ultimately there is no easy solution to this, as MPs are political animals and have to balance constituency interests with Parliamentary ones, backbench work with (for many) aspirations of high office; this is, however, where the advent of a 'career structure' for Select Committee Chairs will pay dividends. As the Liaison Committee reported, 'we would like to see...a better *balance* between the attractions of government office and of service on Select Committees'.¹⁴³²

5. Improving the Effectiveness of the Parliamentary Select Committee: Recommendations and Conclusions

In terms of lessons to be learned and best practice, the innovative and unique working methods and style of the PCRC have much to commend them. There are, however, a number of structural and systematic changes which need to be wrought if the Select Committees are

¹⁴²⁹ Cited in Liaison Committee, *Select committee effectiveness, resources and powers* (HC 2012-13, 697) 107

¹⁴³⁰ PCRC, *The Coalition Government's programme of political and constitutional reform – oral evidence – 12 May 2011* (HC 2010-12) Q163

¹⁴³¹ Griffith and Ryle (n17) 13-031-2

¹⁴³² Liaison Committee, *Shifting the balance: select committees and the executive* (HC 1999-00, 300) 30

to be further strengthened, to build upon the success of the implementation of the Wright Reforms; these changes require willingness from, and action by, Government, and the impetus for this will come only from the Committees themselves. A corresponding recognition, by Government, that 'an impartial, all-party view, with serious scrutiny, not done on the basis of the whim of the Chair or the majority of members but by a difficult, independent-minded bunch of people getting under the skin of some of these issues, the House could do the Government a great service'¹⁴³³ would help to adjust the focus.

In summary, further systematic strengthening of the Select Committees could be brought about by changes to Standing Orders – any mechanism short of this would be lacking in permanency, demonstrable, whatever the reasons, through the fact that the PCRC was not reappointed in the 2015 Parliament. Had the PCRC been established, as with the majority of the Committees, via the ordinary Standing Orders rather than as a 'bolt-on' it would have been much more difficult to dispense with. As it was it was straightforward for Government to decline to re-appoint it and the Opposition had no interest in pursuing this either, in Allen's view this was largely because neither Government nor a party (the Opposition) which hoped to, at some point, be in Government particularly wanted additional scrutiny. Allen commented that 'scrutiny only comes from acts of rebellion by Parliament' which he describes as 'very infrequent'. Effective scrutiny comes from Parliamentary rather than Governmental institutions and this is why reforms need to be driven by the Parliamentarians, the backbenches. This is where the Backbench Business Committee has perhaps not yet fulfilled its potential. An interesting notion came to light during my research in relation to a possible innovation which lies within the power of the Backbench Business Committee. It has time allocated and within that substantive motions can be put down and voted on. In principle, however, there is nothing to prevent the Backbench Business Committee putting down a motion to appoint a Select Committee or to order the House to do something, for example, to change a Standing Order. If such a motion were passed, to, for example, appoint a Committee to do 'x', then the House, the Administration would be able to act regardless of Government.¹⁴³⁴

¹⁴³³ Graham Allen MP, HC Deb 3 Jun 2015 vol 596 col 715

¹⁴³⁴ Thoughts drawn from private interviews

Another factor is that the Select Committees, in large part, depend upon the Executive for their continued existence. For most, that is, the 'Select Committees set up by Standing Order continue in existence until that Standing Order is amended or rescinded'.¹⁴³⁵ For a Committee such as the PCRC, which was established, through an additional Standing Order, as a 'bolt-on' therein lies its 'fatal weakness'.¹⁴³⁶

5.1. Adjusting Behaviour to Achieve Sustained Systematic Change

The former Chair of the PCRC¹⁴³⁷ believes that despite the 'big breakthrough' brought about as a result of the Wright Reforms, which he argues 'were resisted by Government', 'the problem is people have not changed their habits so Select Committee Chairs and the Liaison Committee have acted as they used to, not recognising that we have to push this on.'¹⁴³⁸

There are adjustments which *are* within the control of the Committees themselves, an obvious example, made much more viable by fixed-term Parliaments, is for the Committee to develop a medium to long term plan, whether that be (ideally) across the life of a Parliament or for a couple of years at least. The strategic view adopted by the PCRC was evident to those on the outside (outside in terms of Westminster beyond the Committee itself and also to academic observers). It is clear that 'having a view and a sense of a plan...is a very welcome thing'.¹⁴³⁹ Such strategic thinking and planning is probably the best lesson, from the experience of the PCRC, which might be taken forward by other future Committees. This style of working has several notable advantages from a variety of perspectives, most obviously for the Committee and its members who will then have agreed amongst themselves a clear vision of what they intend to achieve across their term (and with the required 'buy in' from the members a strong base from which to operate), from a logistical and practical perspective such strategic planning is beneficial for everyone from the Committee staff to the Government and civil servants as witness requests can be made early and thus, depending on

¹⁴³⁵ Cabinet Office, *Guidance for officials from departments and agencies on giving evidence to Parliamentary Select Committees*, October 2014, 75

¹⁴³⁶ Private Interview with Graham Allen (Chair of the PCRC 2010-15)

¹⁴³⁷ Also a member of the Wright Committee

¹⁴³⁸ Private Interview with Graham Allen (Chair of the PCRC 2010-15)

¹⁴³⁹ Private Interview with Committee Clerk

how cynical one's view is in terms of the 'willingness' of the Government to participate, this makes it easier for witnesses to find time to attend or difficult from them to delay such attendance. From the Committee perspective, an idea of the end goal is equally useful. It remains crucial to ensure that such strategising should not preclude a Committee's ability to respond to issues of immediacy and to undertake ad hoc inquiries in addition to the more planned for projects.

5.2. Personnel: Staffing and Members

Another operational difficulty, which could be easily resolved, relates to the delay in appointing members to Select Committees. This difficulty feeds into another possible point of concern, that of the Chair as potentially overly dominant. Although on the evidence, even those Chairs with a clear agenda and vision certainly recognise the importance of taking their members along with them, the need for unanimity if they want to actually achieve anything or have any decent chance at influencing policy. Committee Chairs recognise the need of ensuring they get 'buy-in' from their more awkward members, this might be by going around them individually, or if appropriate actually adopting some of their more plausible suggestions from time to time – such actions help to ensure all Committee members feel valued and this along with 'giving them a job to do'¹⁴⁴⁰ goes some way towards increasing harmony and, more importantly, assisting with the retention of members.

If there is a delay in appointing the Committee members, as happened after the 2017 General Election, the likelihood of the Chair dominating the agenda is substantially increased. In this instance, the Chairs were elected during the summer with members not in place until two or three months later. In circumstances when there is a change of Government there are likely to be slight delays, although these ought to be minimised, in terms of appointing all the various members of Government, the PPSs, and the same for the Opposition. When a party is re-elected at a General Election there should be no requirement for the same leeway, it should not be difficult for a re-elected Prime Minister to make appointments and re-appointments quickly. The reason this is of particular importance from the Select Committee

¹⁴⁴⁰ Private Interview with Graham Allen (Chair of the PCRC 2010-15)

perspective is that if the Committees are elected before Government (and Opposition Front Bench) positions are set there is a greater likelihood of Committee members jumping ship for a junior Ministerial appointment. This happened to the PCRC soon after its establishment in 2010.

Election of Chairs has helped to further cement their position for a decent term – these individuals now actively put themselves forward and therefore are ‘people who definitely want this and know what they are signing up for’.¹⁴⁴¹ The role of Chair is something of a double-edged sword. It is often the case that the Committee Chair drives everything, although less so in the House of Lords Committees. ‘It depends on the character of the Chair and the extent to which they’ve got a strong agenda and sense of what they want to do’.¹⁴⁴² There is also an associated ‘risk’ of the Chair dominating the agenda in situations where there is a substantial gap between the appointment of a Committee Chair and the rest of the members, the Chair will, naturally, know that they are a Chair and ‘feel themselves invested with the authority of Chairmanship although obviously its [the Committee] not yet met, they will no doubt be wanting to do things and therefore directing the staff to prepare papers on this idea. I suspect there’s a greater risk of being Chair-led because they have a couple of months of this. There are staff sitting around waiting to do stuff at the behest of the Committee’.¹⁴⁴³

Whilst most of those who have served on a Committee would agree that ‘[A]ny Select Committee lives or dies by the capability of its Clerks and those who assist it’¹⁴⁴⁴ there are mixed views around whether clerks should stay in post for a whole Parliament, much of this will be based on anecdotal experiences; if Committees have had particularly positive experiences with particular clerks then they are more likely to argue for greater continuity. The Liaison Committee suggested that clerks should stay put for five years but this has not been welcomed by the House Administration. From the perspective of the clerks though, although it is possible in theory, albeit only in a limited sense, to ask to stay in a particular

¹⁴⁴¹ Private Interview with Committee Clerk

¹⁴⁴² Private Interview with Committee Clerk

¹⁴⁴³ Private Interview with Committee Clerk

¹⁴⁴⁴ Graham Allen MP, HC Deb 3 June 2015, vol 596 col 714

post ultimately because the House Administration arranges their jobs the clerks usually spend two or three years on a Committee and then are moved to another post. As the Committee clerks are supposed to be generalists, in theory they do not need to have any subject specific knowledge rather this aspect ought to be provided by the 'Committee specialists who are supposed to be the people imbued with the knowledge'. The clerks' role is to marshall the evidence and to contribute to Report writing. In the words of one senior clerk: 'I think the clerk should be able to come and go and the Committee not really notice'.¹⁴⁴⁵

5.3. Internal Factors within the Control of the Parliamentary Select Committees

Committees can and do learn from each other in an informal sense, sharing best practice through a variety of means but perhaps most often when a member of one Committee has been speaking with a member of another Committee. Those with who I spoke about this were clear that it was much more likely to occur 'through informal peer group learning than...through structured end of session reports'.¹⁴⁴⁶

5.4. Expanded Functions

It has been suggested in the past, for example, by the Procedure Committee that Select Committees should be allowed to table amendments to Bills.¹⁴⁴⁷ This was a practice adopted by the PCRC informally through its members, particularly the Chair, both to initiate specific changes and, perhaps more significantly, to put on the agenda an area of concern or where mixed views existed. The approach which the PCRC took to the tabling of amendments, in particular to the Fixed-term Parliaments legislation,¹⁴⁴⁸ ought to serve as a 'model' or template for future adoption by other Committees, at least until a change is made to enable Committees to collectively propose amendments.

¹⁴⁴⁵ Interviews with Committee Clerks

¹⁴⁴⁶ Thoughts drawn from interviews

¹⁴⁴⁷ See Procedure Committee, *Improving the effectiveness of parliamentary scrutiny: (a) Select Committee amendments; (b) Explanatory statements on amendments; (c) Written parliamentary questions* (HC 2010-11, 800); Government Response (HC 2010-12, 1063) and earlier Report from the Procedure Committee, *Tabling of amendments by select committees*, (HC 2008-09, 1104)

¹⁴⁴⁸ Discussed above in chapter six

5.5. Parliamentary Time

In terms of increasing the profile of the work of the Select Committees, recommendations have been made that Select Committee Reports could be more frequently debated, including the substantive recommendations.¹⁴⁴⁹ Hilary Benn, at the time Shadow Leader of the House of Commons, contributed to the debate by way of a speech to the Hansard Society: 'In Parliament, time equals power...We need to give time for Select Committees to put their work, and their ideas, directly before MPs on the floor of the House.'¹⁴⁵⁰

It is certainly true that a combination of topical activity on the part of a committee combined with and much bolstered by the work of the new Backbench Business Committee could greatly assist with making better use of the House's limited time and helping to 'make debates and questions more topical and engaging'¹⁴⁵¹

6. Final Reflections

Select committees are not glamorous, but in terms of holding the government to account, they are more respectable than the media and more constructive than Her Majesty's opposition.¹⁴⁵²

If it could be asserted by Judge in the early 1990s that 'the enhanced and sustained accountability of government departments to the Commons was sufficient in its own right to view the post-1979 system as 'worthwhile and as a success',¹⁴⁵³ since the Wright Reforms twenty years later the Committee system is undoubtedly a major accomplishment. The Liaison Committee's 2015 Legacy Report concluded on the positive note that 'government

¹⁴⁴⁹ Liaison Committee, *Shifting the Balance: Select Committees and the Executive*, (HC 1999–2000, 300) and *Shifting the Balance, Unfinished business*, (HC 2000–01, 321-I)

¹⁴⁵⁰ Hilary Benn, *Making Parliament Work for People* (Speech by Rt Hon Hilary Benn MP (Shadow Leader of the House of Commons) to the Hansard Society: 11th May 2001)

¹⁴⁵¹ Modernisation Committee, *Revitalising the Chamber: the role of the back bench Member* (HC 2006-07, 337) 6

¹⁴⁵² Christopher Tyler, 'Three simple ways to strengthen our parliamentary democracy' *The Guardian* (4 March 2011)

¹⁴⁵³ David Judge, 'The "Effectiveness" of the Post-1979 Select Committee System: The Verdict of the 1990 Procedure Committee' (1992) 63 *The Political Quarterly* 92-93

departments are taking committees seriously and engaging positively with them’ and ‘while there have been occasions of late replies to reports and disagreements about witnesses and evidence, most relationships between select committees and departments appear to be constructive’.¹⁴⁵⁴

However, the extent to which Committees can set the agenda remains more limited. It is true that the hard-working and tenacious Committees can ‘place issues on to the House’s agenda or to accelerate them up the list of Whitehall’s priorities’ but this is often a secondary role to that of scrutiny. A conscious effort can be made by a Committee, as with the PCRC and ‘the Treasury Select Committee...to produce two distinct strands of work. One will force the Government to explain itself. The second will force the Government to consider and respond to proposals from the Committee itself.’¹⁴⁵⁵ Despite the earnest work carried out by the PCRC it was disappointing to hear from Ministers that they were ‘not aware of having been influenced in any significant way by the Political and Constitutional Reform Committee.’¹⁴⁵⁶ If there were one aspect on which I would recommend change it would be to ensure that in its ambitions and passion for inquiring into the bigger picture - in the case of the PCRC this was the matter of codification, largely driven by its Chair - such a Committee would need to be very conscious not to overlook pressing smaller-scale issues of topical concern being squeezed off the agenda altogether. For the PCRC its prolific output on big picture issues perhaps limited the greater practical impact it might have had on smaller scale matters.

A criticism levelled at Committees, as being ‘so engrossed in the practice of parliamentary committee politics that they do not take the time to contemplate exactly what it is that they are doing. [and] Activity becomes a substitute for analysis’,¹⁴⁵⁷ did not apply to the PCRC which maintained generally good working relationships with Ministers and others and remained focused on its end aims.

¹⁴⁵⁴ Liaison Committee, *Legacy Report* (HC 2014-15, 954) 16

¹⁴⁵⁵ Andrew Tyrie, ‘Government by Explanation’ (Institute for Government, April 2011) 19

¹⁴⁵⁶ Private interviews

¹⁴⁵⁷ Cited in Gavin Drewry, *The New Select Committees: A study of the 1979 reforms* (2nd edn, Clarendon Press 1989) xvii

The Political and Constitutional Reform Committee was an ‘experiment’ that should be considered again and repeated, if and when, domestic constitutional reform rises in prominence – something which is likely to occur after the expected Brexit in 2019. There is also an argument to be made that a Committee with a ‘monitoring’ function in terms of constitutional affairs, in the overall context of scrutiny by Parliament, should be a permanent body. It’s true that the House of Lords Constitution Committee performs this role but a Commons Committee provides an additional perspective and heightened democratic legitimacy to the process of scrutiny of constitutional and political reform.

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APPENDICES

Appendix A – Classification of the PCRC’s Inquiries and Work Programme

In order to categorise the PCRC’s work programme inquiries have been classified into the following areas of work:

A: Legislative Review

To include both pre and post legislative scrutiny, and related inquiries, for example, that looking at improving legislative standards

B: Evidence Collection – A forum for research and attempt to improve debate

Collecting and compiling evidence and providing a forum for research with a view to informing, thus improving, debate

C: Review of Constitutional Process & Procedure – codification and prerogative powers

SUMMARY:

43 reports over the Parliament

2 of these were one-off pre-appointment hearings

1 was the ‘Legacy Report’

Of the remaining 40:

16 reports can be classified as legislative review in one way or another

12 as collecting and compiling evidence and providing a forum for research with a view to informing, thus improving, debate

12 as review of Constitutional Process & Procedure – codification and prerogative powers

There is, in the majority of inquiries, overlap between the categories, and although a clear delineation is not always possible, the dominant purpose or objective of each inquiry has been identified. Such categorisation also sketches out how different types of inquiry carried out by the PCRC fit together in terms of its overall agenda – which related to the potential for constitutional codification, either in part or as a whole – and also demonstrates how the Committee’s role was of importance in the wider picture of constitutional and parliamentary reform and hence has assisted with my thesis analysing the impact and effectiveness of the Committee’s work.

BIBLIOGRAPHY AND APPENDICES

Eloise E C Ellis, *The Working and Impact of the House of Commons Political and Constitutional Reform Committee in the 2010-15 Parliament*

Category	Session	Title	Government response in brackets
A: Legislative Review	2010-12	Parliamentary Voting System and Constituencies Bill	HC 422
A: Legislative Review	2010-12	Fixed-term Parliaments Bill	HC 436 (Cm 7951)
A: Legislative Review	2010-12	Parliamentary Voting System and Constituencies Bill	HC 437 (Cm 7997)
C: Review of Constitutional Process & Procedure – codification and prerogative powers	2010-12	Lessons from the process of Government formation after the 2010 General Election	HC 528 (HC 866)
B: Evidence Collection – A forum for research and Attempt to improve Debate	2010-12	Voting by convicted prisoners: Summary of evidence	HC 776
C: Review of Constitutional Process & Procedure – codification and prerogative powers	2010-12	Constitutional implications of the Cabinet Manual	HC 734 (Cm 8213)
B: Evidence Collection – A forum for research and Attempt to improve Debate	2010-12	Seminar on the House of Lords: Outcomes	HC 961

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C: Review of Constitutional Process & Procedure – codification and prerogative powers	2010-12	Parliament's role in conflict decisions	HC 923 (HC 1477)
C: Review of Constitutional Process & Procedure – codification and prerogative powers	2010-12	Parliament's role in conflict decisions: Government Response to the Committee's Eighth Report of Session 2010-12	HC 1477 (HC 1673)
A: Legislative Review	2010-12	Individual Electoral Registration and Electoral Administration	HC 1463 (Cm 8177)
A: Legislative Review	2010-12	Rules of Royal Succession	HC 1615 (HC 586)
C: Review of Constitutional Process & Procedure – codification and prerogative powers	2010-12	Parliament's role in conflict decisions—further Government Response: Government Response to the Committee's Ninth Report of Session 2010-12	HC 1673
B: Evidence Collection – A forum for research and Attempt to improve Debate	2010-12	Political Party Finance	HC 1763
A: Legislative Review	2012-13	Recall of MPs	HC 373 (HC 646)

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A: Legislative Review	2012-13	Introducing a statutory register of lobbyists	HC 153 (HC 593)
C: Review of Constitutional Process & Procedure – codification and prerogative powers	2012-13	Prospects for codifying the relationship between central and local government	HC 656 (Cm 8623)
C: Review of Constitutional Process & Procedure – codification and prerogative powers	2012-13	Do we need a constitutional convention for the UK?	HC 371 (Cm 8749)
A: Legislative Review	2013-14	Ensuring standards in the quality of legislation	HC 85 (HC 611)
B: Evidence Collection – A forum for research and Attempt to improve Debate	2013-14	The impact and effectiveness of ministerial reshuffles	HC 255 (HC 1258)
B: Evidence Collection – A forum for research and Attempt to improve Debate	2013-14	Revisiting Rebuilding the House: the impact of the Wright reforms	HC 82 (HC 910)
A: Legislative Review	2013-14	The role and powers of the Prime Minister: the impact of the Fixed-term Parliaments	HC 440 (HC 1079)

BIBLIOGRAPHY AND APPENDICES

Eloise E C Ellis, *The Working and Impact of the House of Commons Political and Constitutional Reform Committee in the 2010-15 Parliament*

Act 2011 on Government

Pre-appointment hearing	2013-14	Pre-appointment hearing: The Chair of the House of Lords Appointments Commission	HC 600
A: Legislative Review	2013-14	Introducing a statutory register of lobbyists: Government Response to the Committee's Second Report of Session 2012-13	HC 593
A: Legislative Review	2013-14	The Government's lobbying Bill	HC 601 (HC 801)
B: Evidence Collection – A forum for research and Attempt to improve Debate	2013-14	Parliament's role in conflict decisions: an update	HC 649
B: Evidence Collection – A forum for research and Attempt to improve Debate	2013-14	House of Lords reform: what next?	HC 251 (HC 1079)
A: Legislative Review	2013-14	The Government's lobbying Bill: follow up	HC 891 (HC 535)
A: Legislative Review	2013-14	Impact of Queen's and Prince's consent on the legislative process	HC 784 (HC 224)

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Eloise E C Ellis, *The Working and Impact of the House of Commons Political and Constitutional Reform Committee in the 2010-15 Parliament*

B: Evidence Collection – A forum for research and Attempt to improve Debate	2013-14	Parliament's role in conflict decisions: a way forward	HC 892
A: Legislative Review	2013-14	Fixed-term Parliaments: the final year of a Parliament	HC 976 (HC 874)
C: Review of Constitutional Process & Procedure – codification and prerogative powers	2013-14	Constitutional role of the judiciary if there was a codified constitution	HC 802
C: Review of Constitutional Process & Procedure – codification and prerogative powers	2014-15	Role and powers of the Prime Minister	HC 351
C: Review of Constitutional Process & Procedure – codification and prerogative powers	2014-15	A new Magna Carta?	HC 463
Pre-appointment hearing	2014-15	Pre-appointment hearing: Registrar of Consultant Lobbyists	HC 223
B: Evidence Collection – A forum for research and Attempt to improve Debate	2014-15	Voter engagement in the UK	HC 232 (HC 1037)
C: Review of Constitutional Process & Procedure	2014-15	Revisiting the Cabinet Manual	HC 233

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Eloise E C Ellis, *The Working and Impact of the House of Commons Political and Constitutional Reform Committee in the 2010-15 Parliament*

– codification and
prerogative powers

B: Evidence Collection – A forum for research and Attempt to improve Debate	2014-15	Voter engagement in the UK: follow up	HC 938
C: Review of Constitutional Process & Procedure – codification and prerogative powers	2014-15	Consultation on A new Magna Carta?	HC 599
A: Legislative Review	2014-15	What next on parliamentary constituency boundaries?	HC 600
A: Legislative Review	2014-15	Constitutional implications of the Government's draft Scotland clauses	HC 1022
B: Evidence Collection – A forum for research and Attempt to improve Debate	2014-15	Government formation post- election	HC 1023
B: Evidence Collection – A forum for research and Attempt to improve Debate	2014-15	The future of devolution after the Scottish referendum	HC 700
‘Legacy Report’	2014-15	The work of the Committee in the 2010 Parliament	HC 1128

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Eloise E C Ellis, *The Working and Impact of the House of Commons Political and Constitutional Reform Committee in the 2010-15 Parliament*

Appendix B: Summary of PCRC Reports (2010-15)

Session 2010-12

First Report	Parliamentary Voting System and Constituencies Bill	HC 422
Second Report	Fixed-term Parliaments Bill	HC 436 (Cm 7951)
Third Report	Parliamentary Voting System and Constituencies Bill	HC 437 (Cm 7997)
Fourth Report	Lessons from the process of Government formation after the 2010 General Election	HC 528 (HC 866)
Fifth Report	Voting by convicted prisoners: Summary of evidence	HC 776
Sixth Report	Constitutional implications of the Cabinet Manual	HC 734 (Cm 8213)
Seventh Report	Seminar on the House of Lords: Outcomes	HC 961
Eighth Report	Parliament's role in conflict decisions	HC 923 (HC 1477)
Ninth Report	Parliament's role in conflict decisions: Government Response to the Committee's Eighth Report of Session 2010-12	HC 1477 (HC 1673)
Tenth Report	Individual Electoral Registration and Electoral Administration	HC 1463 (Cm 8177)
Eleventh Report	Rules of Royal Succession	HC 1615 (HC 586)
Twelfth Report	Parliament's role in conflict decisions—further Government Response: Government Response to the Committee's Ninth Report of Session 2010-12	HC 1673
Thirteenth Report	Political party finance	HC 1763

Session 2012-13

First Report	Recall of MPs	HC 373 (HC 646)
Second Report	Introducing a statutory register of lobbyists	HC 153 (HC 593)
Third Report	Prospects for codifying the relationship between central and local government	HC 656 (Cm 8623)

BIBLIOGRAPHY AND APPENDICES

Eloise E C Ellis, *The Working and Impact of the House of Commons Political and Constitutional Reform Committee in the 2010-15 Parliament*

Fourth Report	Do we need a constitutional convention for the UK?	HC 371 (Cm 8749)
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Session 2013-14

First Report	Ensuring standards in the quality of legislation	HC 85 (HC 611)
Second Report	The impact and effectiveness of ministerial reshuffles	HC 255 (HC 1258)
Third Report	Revisiting Rebuilding the House: the impact of the Wright reforms	HC 82 (HC 910)
Fourth Report	The role and powers of the Prime Minister: the impact of the Fixed-term Parliaments Act 2011 on Government	HC 440 (HC 1079)
Fifth Report	Pre-appointment hearing: The Chair of the House of Lords Appointments Commission	HC 600
Sixth Report	Introducing a statutory register of lobbyists: Government Response to the Committee's Second Report of Session 2012-13	HC 593
Seventh Report	The Government's lobbying Bill	HC 601 (HC 801)
Eighth Report	Parliament's role in conflict decisions: an update	HC 649
Ninth Report	House of Lords reform: what next?	HC 251 (HC 1079)
Tenth Report	The Government's lobbying Bill: follow up	HC 891 (HC 535)
Eleventh Report	Impact of Queen's and Prince's consent on the legislative process	HC 784 (HC 224)
Twelfth Report	Parliament's role in conflict decisions: a way forward	HC 892
Thirteenth Report	Fixed-term Parliaments: the final year of a Parliament	HC 976 (HC 874)
Fourteenth Report	Constitutional role of the judiciary if there was a codified constitution	HC 802

Session 2014-15

First Report	Role and powers of the Prime Minister	HC 351
Second Report	A new Magna Carta?	HC 463
Third Report	Pre-appointment hearing: Registrar of Consultant Lobbyists	HC 223

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Eloise E C Ellis, *The Working and Impact of the House of Commons Political and Constitutional Reform Committee in the 2010-15 Parliament*

Fourth Report	Voter engagement in the UK	HC 232 (HC 1037)
Fifth Report	Revisiting the Cabinet Manual	HC 233
Sixth Report	Voter engagement in the UK: follow up	HC 938
Seventh Report	Consultation on A new Magna Carta?	HC 599
Eighth Report	What next on parliamentary constituency boundaries?	HC 600
Ninth Report	Constitutional implications of the Government's draft Scotland clauses	HC 1022
Tenth Report	Government formation post-election	HC 1023
Eleventh Report	The future of devolution after the Scottish referendum	HC 700
Twelfth Report	The work of the Committee in the 2010 Parliament	HC 1128

BIBLIOGRAPHY AND APPENDICES

Eloise E C Ellis, *The Working and Impact of the House of Commons Political and Constitutional Reform Committee in the 2010-15 Parliament*

Appendix C - Membership and Attendance (PCRC)

The initial membership of the PCRC was:

Mr Graham Allen MP (*Labour, Nottingham North*) (*Chair*)*

Nick Boles MP (*Conservative, Grantham and Stamford*)

Mr Christopher Chope OBE MP (*Conservative, Christchurch*)*

Sheila Gilmore MP (*Labour, Edinburgh East*)

Simon Hart MP (*Conservative, Carmarthen West and South Pembrokeshire*)

Tristram Hunt MP (*Labour, Stoke on Trent Central*)

Mrs Eleanor Laing MP (*Conservative, Epping Forest*)

Catherine McKinnell MP (*Labour, Newcastle upon Tyne North*)

Sir Peter Soulsby MP (*Labour, Leicester South*)

Mr Andrew Turner MP (*Conservative, Isle of Wight*)

Stephen Williams MP (*Liberal Democrat, Bristol West*)¹

¹ The membership at dissolution in March 2015 included only two of the original members indicated above with *. In March 2015 the membership was: Mr Graham Allen (Chair) (Labour); Mr Christopher Chope (Conservative); Tracey Crouch (Conservative); Mark Durkan (Social Democratic & Labour Party); Paul Flynn (Labour); Duncan Hames (Liberal Democrat); Fabian Hamilton (Labour); David Morris (Conservative); Robert Neill (Conservative); Chris Ruane (Labour); and Mr Andrew Turner (Conservative)

BIBLIOGRAPHY AND APPENDICES

Eloise E C Ellis, *The Working and Impact of the House of Commons Political and Constitutional Reform Committee in the 2010-15 Parliament*

In the table below, I assumed a committee of ten (rather than eleven) members to measure attendance against during the first year of the PCRC.

Committee Attendance from July 2010 to July 2011

Member	Attendance at Meetings ²	
Graham Allen	30 out of 37	81.1%
Nick Boles	7 out of 12 ³	58.3%
Christopher Chope	26 out of 37	70.3%
Sheila Gilmore	31 out of 37	83.8%
Andrew Griffiths	14 out of 25 ⁴	56%
Fabian Hamilton	14 out of 24 ⁵	58.3%
Simon Hart	32 out of 37	86.5%
Tristram Hunt	26 out of 37	70.3%
Eleanor Laing	29 out of 37	78.4%
Catherine McKinnell	6 out of 13 ⁶	46.2%
Peter Soulsby	11 out of 29 ⁷	37.9%
Andrew Turner	36 out of 37	97.3%
Stephen Williams	22 out of 37	59.5%

² Excluding visit to Edinburgh on 27 January 2011 which did not involve all members (those who visited Edinburgh were Sheila Gilmore, Simon Hart and Andrew Turner)

³ Up to and including the meeting on 28 October 2010 – the last before Boles was discharged from the Committee

⁴ From 4 November 2010 – the first meeting after Griffiths' appointment to the PCRC

⁵ From 11 November 2010 – the first meeting after Hamilton's appointment to the PCRC

⁶ Up to and including the meeting on 4 November 2010 – the last before McKinnell was discharged from the Committee

⁷ Up to 31 March 2010 – the last meeting Soulsby could have attended ((but didn't) prior to being discharged from the Committee

BIBLIOGRAPHY AND APPENDICES

Eloise E C Ellis, *The Working and Impact of the House of Commons Political and Constitutional Reform Committee in the 2010-15 Parliament*

Average attendance by percentage: 72.5%

Total Committee Attendance by percentage (excluding members who were not part of the committee for the entire 12 months above): 67.5% (8 members); and by number of meetings attended: 29 (out of a possible 37).

BIBLIOGRAPHY AND APPENDICES

Eloise E C Ellis, *The Working and Impact of the House of Commons Political and Constitutional Reform Committee in the 2010-15 Parliament*

Appendix D – PCRC Reports without Government Responses (2014-15)

- Political and Constitutional Reform Committee, *Revisiting the Cabinet Manual* (HC 2014-15, 233)
- Political and Constitutional Reform Committee, *A new Magna Carta?* (HC 2014-15, 463)
- Political and Constitutional Reform Committee, *Role and Powers of the Prime Minister* (HC 2014-15, 351)
- Political and Constitutional Reform Committee, *What next on the redrawing of parliamentary constituency boundaries?* (HC 2014-15, 600)
- Political and Constitutional Reform Committee, *Government formation post-election* (HC 2014-15, 1023)
- Political and Constitutional Reform Committee, *Consultation on A new Magna Carta?* (HC 2014-15, 599)
- Political and Constitutional Reform Committee, *The future of devolution after the Scottish referendum* (HC 2014-15, 700)
- Political and Constitutional Reform Committee, *Constitutional implications of the Government's draft Scotland clauses* (HC 2014-15, 1022)
- Political and Constitutional Reform Committee, *A new Magna Carta?* (HC 2014-15, 463)